REPORT OF THE COMMITTEE AGAINST TORTURE

GENERAL ASSEMBLY

OFFICIAL RECORDS: FORTY-SIXTH SESSION

SUPPLEMENT No. 46 (A/46/46)

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NOTE

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

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I. ORGANIZATIONAL AND OTHER MATTERS

A. States parties to the Convention

1. As at 3 May 1991, the closing date of the sixth session of the Committee against Torture, there were 55 States parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Convention was adopted by the General Assembly in resolution 39/46 of 10 December 1984 and opened for signature and ratification in New York on 4 February 1985. It entered into force on 26 June 1987 in accordance with the provisions of its article 27. A list of States that have signed, ratified or acceded to the Convention, together with an indication of those that have made declarations under articles 21 and 22, is contained in annex I to the present report.

2. The text of the declarations, reservations or objections made by States parties with respect to the Convention are reproduced in document CAT/C/2/Rev.1.

B. Opening and duration of the sessions

3. The Committee against Torture has held two sessions since the adoption of its last annual report. The fifth and sixth sessions of the Committee were held at the United Nations Office at Geneva from 12 to 23 November 1990 and from 22 April to 3 May 1991.

4. At its fifth session the Committee held 15 meetings (58th to 72nd meeting) and at its sixth session the Committee held 15 meetings (73rd to 87th meeting). An account of the deliberations of the Committee at its fifth and sixth sessions is contained in the relevant summary records (CAT/C/SR.58-87).

C. Membership and attendance

5. In accordance with article 17, paragraph 6, of the Convention and rule 13 of the Committee's rules of procedure, Mr. Alfredo R. A. Bengzon, by a letter dated 19 October 1990, informed the Secretary-General of his decision to cease to function as a member of the Committee. The letter of resignation was transmitted to the Secretary-General by the Secretary of Foreign Affairs of the Philippines under cover of a note dated 30 October 1990. By the same note, the Government of the Philippines informed the Secretary-General of its decision to appoint, subject to the approval of the States parties, Mr. Antonio Perlas to serve for the remainder of Mr. Bengzon's term on the Committee, which will expire on 31 December 1991.

6. Since none of the States parties to the Convention responded negatively within the six-week period after having been informed by the Secretary-General of the proposed appointment, the Secretary-General considered that they had approved the appointment of Mr. Perlas as a member of the Committee in accordance with the above-mentioned provisions. The list of the members of the Committee in 1991, together with an indication of the duration of their term of office, appears in annex II to the present report.

7. All the members attended the fifth session of the Committee except Ms. Socorro Díaz Palacios. Mr. Ricardo Gil Lavedra attended only part of the session. The sixth session of the Committee was attended by all the members except Mr. Gil Lavedra who attended only a part of that session.

D. Solemn declaration by a member of the Committee

8. At the 73rd meeting, on 22 April 1991, the newly appointed member of the Committee, Mr. Antonio Perlas, made the solemn declaration upon assuming his duties, in accordance with rule 14 of the rules of procedure.

E. Agendas

9. At its 58th meeting, on 12 November 1990, the Committee adopted the following items listed in the provisional agenda (CAT/C/11), submitted by the Secretary-General, in accordance with rule 6 of the rules of procedure, as the agenda of its fifth session:

1. Adoption of the agenda.

2. Organizational and other matters.

3. Submission of reports by States parties under article 19 of the Convention.

4. Consideration of reports submitted by States parties under article 19 of the Convention.

5. Consideration of information received under article 20 of the Convention.

6. Consideration of communications under article 22 of the Convention.

10. At its 73rd meeting, on 22 April 1991, the Committee adopted the following items listed in the provisional agenda (CAT/C/13), submitted by the Secretary-General, in accordance with rule 6 of the rules of procedure, as the agenda of its sixth session:

1. Adoption of the agenda.

2. Solemn declaration by a member of the Committee appointed under article 17, paragraph 6, of the Convention.

3. Organizational and other matters.

4. Submission of reports by States parties under article 19 of the Convention.

5. Consideration of reports submitted by States parties under article 19 of the Convention.

6. Consideration of information received under article 20 of the Convention.

7. Consideration of communications under article 22 of the Convention.

8. Future meetings of the Committee.

9. Action by the General Assembly at its forty-fifth session:

   (a) Annual report submitted by the Committee under article 24 of the Convention;

   (b) Effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights.

10. Annual report of the Committee on its activities.

F. Working methods of the Committee

11. The Committee resumed discussion on its working methods relating to its functions under article 19 of the Convention at its 67th, 70th and 71st meetings on 19 and 21 November 1990. 1/

12. The Committee agreed that the appointment of a country rapporteur and an alternate country rapporteur for the consideration of each report submitted by a State party, which had been decided at its fourth session, had enabled it to formulate better organized conclusions and that this arrangement should be continued in the future. In order to assist country rapporteurs and their alternates in carrying out their task systematically, informal guidelines were prepared by Ms. Christine Chanet and Mr. Bent Sørensen on the basis of Mr. Sørensen's proposal and circulated to the members of the Committee. It was stressed that the Committee's methods of work could be changed, depending on the circumstances.

13. Members of the Committee also felt that the question of when the Committee should formulate its conclusions needed further clarification. The Committee agreed that, if possible, its conclusions should be formulated immediately following the consideration of a State party's report. A brief suspension of the meeting should normally be sufficient for consultations before the country rapporteur formulated conclusions on behalf of the Committee, it being understood that the members could speak again if they so wished. When further consideration, research or informal consultations were deemed necessary, the country rapporteur would request the Committee to formulate its conclusions during another meeting of the same session.

G. Cooperation between the Committee and the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture

14. The Chairman of the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture, Mr. Jaap Walkate, addressed the Committee at its 77th meeting, on 24 April 1991. He informed the Committee about recent and planned activities of the Board of Trustees of the Voluntary Fund, which had been established by General Assembly resolution 36/151 of 16 December 1981. Subsequently, on 26 April 1991, the Chairman of the Committee and Mr. Sørensen provided information on the Committee's activities to the Board of Trustees of the Voluntary Fund. Both the Committee and the Board of Trustees agreed that they should continue on a regular basis to exchange views and information on matters of mutual concern. They also agreed that wide publicity of their activities would help them in their fight against torture and that financial contributions to the Fund from Governments and non-governmental organizations should be encouraged in order to support the numerous rehabilition programmes for victims of torture under consideration by the Board of Trustees.

15. At its 81st meeting, on 26 April 1991, the Committee was informed by Mr. Sørensen about the activities of the Rehabilitation Centre for Torture Victims in Copenhagen. A film on this subject, entitled In spite of ..., was shown to the members of the Committee. Members of the Board of Trustees also attended the meeting.

H. Exchange of views on the question of a draft optional protocol to the Convention

16. At its 80th meeting, on 25 April 1991, the Committee exchanged views on the question of a draft optional protocol to the Convention.

17. The Committee had before it document E/CN.4/1991/66, containing the text of an optional protocol to the Convention which had been submitted by Costa Rica to the Commission on Human Rights at its forty-seventh session together with an introductory memorandum on the subject. The Committee also had before it Commission decision 1991/107 of 5 March 1991, by which the Commission decided to consider the draft optional protocol at its forty-eighth session in February-March 1992.

18. The draft optional protocol provides for a system of visits to places of detention, on a world-wide basis, to prevent acts of torture. Mr. Sørensen provided information on the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, elaborated in the framework of the Council of Europe and in force since 1 February 1989, which contained similar provisions, as well as on the activities of the European Committee established under that Convention, of which he was First Vice-President. The first general report of the European Committee, covering the period November 1989 to December 1990, was also made available to the Committee.

19. The Committee generally agreed on the principle of a system of preventive visits to places of detention to be established at the universal level. Some reservations were, however, expressed on how that principle was reflected in the text of the draft optional protocol submitted by Costa Rica to the Commission on Human Rights. Concerns were raised about the amount and the

complexity of the work associated with regular visits to places of detention on different continents, the language barrier that might exist between experts and persons interviewed during such visits and the high financial cost of the preventive system envisaged by the draft optional protocol. Some members of the Committee observed that the establishment of a system of visits to places of detention at the universal level was perhaps premature and that it would be preferable for countries outside the Council of Europe to establish similar systems at the national or at the regional level. The view was also expressed that the system envisaged under the draft optional protocol could have a negative effect on the possibility of creating regional systems and on their functioning but one member of the Committee was of the view that this objection had been taken into account by the authors of the draft optional protocol in its article 9 on relations with regional organizations. Members of the Committee acknowledge, however, that it was for States, and in particular States parties to the Convention, to study carefully the text of the optional protocol and express their opinion on it in the Commission on Human Rights. Some members of the Committee were of the view that, if a system of visits to places of detention at the universal level was to be adopted, the monitoring mechanism established under the Convention and that envisaged under the draft optional protocol should be independent. Other members of the Committee were of the view that a link should clearly subsist between the two mechanisms in order to avoid conflicts of competence and undue proliferation of organs dealing with the same issue.

20. The Committee agreed that the text of the draft optional protocol submitted by Costa Rica provided a valuable basis for discussion in the Commission on Human Rights and expressed support for the initiative as well as for the experts and representatives of non-governmental organizations who had participated in the elaboration of the text and had been following developments relating to this question in the Commission on Human Rights.

II. ACTION BY THE GENERAL ASSEMBLY AT ITS FORTY-FIFTH SESSION

21. This item was included in the agenda of the sixth session of the Committee so that it could consider the follow-up action given to its activities, on the basis of its annual reports submitted under article 24 of the Convention, by the General Assembly and other United Nations organs, and also consider other matters of interest.

22. The Committee took up this agenda item at its 82nd and 83rd meetings, held on 26 April 1991.

A. Annual report submitted by the Committee against Torture under article 24 of the Convention

23. The Committee had before it the summary records of the Third Committee of the General Assembly covering the discussion of its annual report (A/C.3/45/SR.35-42) and General Assembly resolution 45/142 of 14 December 1990 on the status of the Convention.

24. The Committee took note with interest of the views expressed during the discussion in the Third Committee of the General Assembly and of General Assembly resolution 45/142 which support the Committee in the development of its activities under the Convention.

B. Participation in the World Conference on Human Rights

25. In connection with this sub-item, the Committee had before it General Assembly resolution 45/155 of 18 December 1990, by which the Assembly decided to convene at a high level a World Conference on Human Rights and, inter alia, encouraged the chairmen or other designated members of human rights expert bodies to take part in the work of the Preparatory Committee of the Conference scheduled to meet at the United Nations Office at Geneva in September 1991. The Committee also had before it Commission on Human Rights resolution 1991/30 of 5 March 1991, by which the Commission made a number of recommendations concerning the work of the Preparatory Committee of the Conference.

26. The Committee designated Ms. Chanet as its representative to the Preparatory Committee of the Conference and Ms. Díaz Palacios as its alternate representative and requested them to prepare a document for the Preparatory Committee's meeting in September and to take part in its work.

27. The Committee also suggested that the World Conference for Human Rights should draw particular attention to the issue of the publicity of the activities of treaty bodies. The view was expressed that the change of the format and presentation of annual reports of treaty bodies or the utilization of new technology in mass media, especially in the use of video systems, would help in promoting the dissemination of information on human rights.

C. Effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights

Fifth session

28. The Committee held a preliminary discussion on issues relating to this sub-item at its 67th meeting, on 19 November 1990. The Chairman of the Committee, who had participated in the third meeting of Chairpersons of human rights treaty bodies held at the United Nations Office at Geneva from 1 to 5 October 1990, provided information on the conclusions and recommendations of that meeting.

29. The Committee, in particular, suggested that the report of the next meeting of Chairpersons of human rights treaty bodies to the General Assembly should include an annex providing information on States parties to various human rights instruments whose reports were overdue.

Sixth session

30. In connection with this sub-item, the Committee had before it the report of the third meeting of Chairpersons of human rights treaty bodies to the General Assembly (A/45/636, annex), General Assembly resolution 45/85 of 14 December 1990 and Commission on Human Rights resolution 1991/20 of 1 March 1991.

31. In connection with the problem of overdue reports by States parties, members of the Committee took note with interest of the decision taken by the Committee on the Elimination of Racial Discrimination to review the implementation of the Convention in a State party on the basis of that State party's last report if an updated periodic report had not been submitted in spite of several reminders. They were also of the view that the list of States parties whose reports were overdue should be provided to the media during press conferences of the Committee.

32. In addition, members of the Committee took note with interest of the recommendation of the meeting of Chairpersons to the effect that the General Assembly should take appropriate measures to ensure the financing of each of the treaty bodies from the United Nations regular budget. The view was expressed that this would encourage a large number of States to become parties, in particular, to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

33. In accordance with the relevant recommendations of the meeting of Chairpersons, the Committee decided to appoint individual members of the Committee to be responsible for following as closely as possible developments in one of the other treaty bodies and reporting thereon to the Committee.

34. Furthermore, members of the Committee expressed the wish to be informed about developments with regard to the establishment in the United Nations of a computerized database to improve the efficiency and effectiveness of the functioning of the treaty bodies.

35. Members of the Committee also stressed the importance of giving background briefings to newly elected members of treaty bodies. They agreed to deal with this issue at their eighth session, in April 1992, subsequent to the election of half of the membership of the Committee at the third meeting of the States parties to the Convention on 26 November 1991.

D. Consolidated guidelines for the initial part of the reports of States parties

36. The Committee noted that the draft consolidated guidelines for the initial part of the reports of States parties, recommended by the second meeting of Chairpersons of human rights treaty bodies, had been approved at its 49th meeting, on 26 April 1990 (fourth session), and that at their third meeting the Chairpersons had recommended that the consolidated guidelines, as drawn up in consultation with all of the treaty bodies, should be added to the guidelines of each of the treaty bodies as soon as possible.

37. Accordingly, at its 82nd meeting, on 26 April 1991, the Committee decided to add the consolidated guidelines for the initial part of State party reports to its general guidelines regarding the form and contents of initial reports to be submitted by States parties under article 19, paragraph 1, of the Convention and to make the necessary adaptations of its general guidelines. The final text of the consolidated guidelines and the text of the revised general guidelines appear in annexes IV and V to the present report.

III. SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

A. Action taken by the Committee to ensure the submission of reports

Fifth session

38. The Committee, at its 58th meeting, held on 12 November 1990, considered the status of submission of reports under article 19 of the Convention. The Committee had before it the following documents:

(a) Note by the Secretary-General concerning initial reports of 27 States parties that were due in 1988 (CAT/C/5);

(b) Note by the Secretary-General concerning initial reports of 10 States parties that were due in 1989 (CAT/C/7);

(c) Note by the Secretary-General concerning initial reports of 11 States parties that were due in 1990 (CAT/C/9).

39. The Committee was informed that, in addition to the seven reports that were scheduled for consideration by the Committee at its fifth session (see sect. IV, para. 50), the Secretary-General had received the additional reports of Chile (CAT/C/7/Add.9) and Colombia (CAT/C/7/Add.10) requested by the Committee at its third session under rule 67, paragraph 2, of its rules of procedure, as well as additional information from Austria* and Norway,* requested by the Committee at its second session.

40. In accordance with rule 65 of its rules of procedure, the Committee decided to request the Secretary-General to continue sending reminders automatically to those States parties whose initial reports were more than 12 months overdue, and subsequent reminders every six months. Accordingly, on 15 January 1991 a fourth reminder was sent by the Secretary-General to Belize, Bulgaria, Luxembourg, Togo, Uganda and Uruguay, whose initial reports were due in 1988 and had not yet been received. Second reminders were sent by the Secretary-General on 15 January 1991 and on 22 February 1991 respectively to Guyana and Peru, whose initial reports were due in 1989 but had not yet been received.

41. In addition, first reminders were sent by the Secretary-General to Cameroon and Senegal which had been requested by the Committee at its third and fourth sessions, respectively, to furnish additional reports pursuant to rule 67, paragraph 2, of its rules of procedure.

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* Information consisting of legal and judicial texts or statistical tables was made available to the Committee, but it has not been issued as a document.

Sixth session

42. At its 73rd meeting, held on 22 April 1991, the Committee also considered the status of submission of reports under article 19 of the Convention. In addition to the documents listed in paragraph 38 above, the Committee had before it a note by the Secretary-General concerning initial reports of seven States parties due in 1991 (CAT/C/12).

43. The Committee was informed that, in addition to the three reports that were scheduled for consideration by the Committee at its sixth session (sect. IV, para. 51), the Secretary-General had received the initial reports of Belize (CAT/C/5/Add.25) and the United Kingdom of Great Britain and Northern Ireland (CAT/C/9/Add.6). He had also received additional information from Egypt (CAT/C/5/Add.23) and Spain* that had been requested by the Committee at its second and fifth sessions, respectively, and the additional reports of Cameroon (CAT/C/5/Add.26), Ecuador (CAT/C/7/Add.11) and Senegal* pursuant to rule 67, paragraph 2, of the rules of procedure of the Committee.

44. The Committee was also informed that initial reports had not yet been received from the following States parties: Bulgaria, Luxembourg, Togo, Uganda and Uruguay, whose reports were due in 1988 and Guyana and Peru, whose reports were due in 1989. In addition, a third reminder was sent to Denmark, which had been requested by the Committee at its second session to provide additional information.

45. The Committee again requested the Secretary-General to continue sending reminders automatically to those States parties whose initial reports were more than 12 months overdue and subsequent reminders every six months.

46. The Committee also requested the Secretary-General to send reminders automatically every six months to those States parties which had been requested to furnish additional reports pursuant to rule 67, paragraph 2, of its rules of procedure and those States parties which had been requested to provide additional information. The Committee agreed that in the future, when it requested a State party, at the end of the consideration of its report, to submit an additional report under rule 67, paragraph 2, it should also decide whether or not the State party should be invited to send representatives to attend meetings at which the Committee was to consider the additional report.

47. At its 83rd meeting, on 29 April 1991, the Committee explored possible ways to draw the attention of States parties to the importance of adequate and timely submission of their reports in fulfilment of their obligations under article 19 of the Convention. During the discussion various measures were considered, such as meetings of members of the Committee with representatives of States parties whose reports were overdue; technical assistance by members of the Committee to States parties in the preparation of their reports, to be made available within the framework of the Programme of Advisory Services and Technical Assistance of the Centre for Human Rights; and visits of members of the Committee to States parties whose Governments would specifically request their advice and assistance for the preparation of their reports. It was also suggested that, where States parties were three years late in submitting their reports, the Committee would examine the implementation of the Convention in that State party on the basis of such information as it had available to it. The Committee decided to resume discussion on this issue at its seventh

session in November 1991 on the basis of suggestions to be provided by the Secretariat.

48. The status of submission of reports by States parties under article 19 of the Convention as at 3 May 1991, the closing date of the sixth session of the Committee, appears in annex III to the present report.

B. General guidelines regarding the form and contents of periodic reports to be submitted by States parties under article 19, paragraph 1, of the Convention

49. The Committee discussed this issue at its 82nd and 85th meetings, on 26 and 30 April 1991. At the 85th meeting, on the basis of a text proposed by its Chairman, the Committee adopted its general guidelines regarding the form and contents of periodic reports to be submitted by States parties under article 19, paragraph 1, of the Convention. The text of the general guidelines appears in annex VI to the present report.

IV. CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

50. At its fifth and sixth sessions, the Committee examined initial reports submitted by eight States parties under article 19, paragraph 1, of the Convention and additional reports requested from three States parties pursuant to rule 67, paragraph 2, of the rules of procedure. It devoted 8 of the 15 meetings it held during the fifth session to the consideration of reports (CAT/C/SR.59-66). The following reports, listed in the order in which they had been received by the Secretary-General, were before the Committee at its fifth session:

Spain	(CAT/C/5/Add.21)
Turkey	(CAT/C/7/Add.6)
Ecuador	(CAT/C/7/Add.7)
Greece	(CAT/C/7/Add.8)
Netherlands Antilles	(CAT/C/9/Add.2)
Netherlands: Aruba (additional report)	(CAT/C/5/Add.3)
Finland	(CAT/C/9/Add.4)

51. At its sixth session, the Committee devoted 6 of the 15 meetings it held to the consideration of reports submitted by States parties (CAT/C/SR.75-80). The following reports, listed in the order in which they had been received by the Secretary-General, were before the Committee at its sixth session:

Chile (additional report)	(CAT/C/7/Add.9)
Panama	(CAT/C/5/Add.24)
Algeria	(CAT/C/9/Add.5)

52. At its 73rd meeting, on 22 April 1991, the Committee agreed, at the request of the Government concerned, to postpone until its seventh session the consideration of the additional report of Ecuador (CAT/C/7/Add.11).

53. In accordance with rule 66 of the rules of procedure of the Committee, representatives of all the reporting States were invited to attend the meetings of the Committee when their reports were examined. All of the States parties whose reports were considered by the Committee sent representatives to participate in the examination of their respective reports.

54. In accordance with the decision taken by the Committee at its fourth session, 2/ country rapporteurs and alternate rapporteurs were designated by the Chairman, in consultation with the members of the Committee and the Secretariat, for each of the reports submitted by States parties and considered by the Committee at its fifth and sixth sessions. The list of the above-mentioned reports and the names of the country rapporteurs and their alternates for each of them appear in annex VII to the present report.

55. In connection with its consideration of reports, the Committee also had before it the following documents:

(a) Status of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and reservations and declarations under the Convention (CAT/C/2/Rev.1);

(b) General guidelines regarding the form and contents of initial reports to be submitted by States parties under article 19 of the Convention, adopted by the Committee at its third session (CAT/C/4/Rev.1).

56. The following sections, arranged on a country-by-country basis according to the sequence followed by the Committee in its consideration of the reports, contain summaries based on the records of the meetings at which the reports were considered. More detailed information is contained in the reports submitted by the States parties and in the summary records of the relevant meetings of the Committee.

Spain

57. The Committee considered the initial report of Spain (CAT/C/5/Add.21) at its 59th and 60th meetings, held on 13 November 1990 (CAT/C/SR.59 and 60).

58. Members of the Committee expressed their appreciation of the Spanish Government's cooperation with regard to the implementation of the Convention and welcomed the precise and interesting report it had submitted. They observed, however, that the report contained little reference to the way in which the Spanish legal system actually functioned or to any problems that might have arisen in connection with the implementation of the Convention and requested further information in that regard.

59. Noting that the Constitution of Spain provided for the incorporation of international treaties into internal law, members of the Committee wished to know, in particular, which provisions of the Convention could be automatically applied by the courts and which could not be so applied. Furthermore, with reference to Spanish legislation concerning pre-trial detention, it was asked whether only the judicial police could make arrests or whether the National Police and the Civil Guard could also do so and which of these authorities actually held detainees in custody. Noting also that, according to the Code of Criminal Procedure, notice of an arrest had to be given to the judicial authority or public prosecutor within 24 hours, members asked whether the detainee was placed at the disposal of the judicial authorities when that period had expired.

60. Generally, members of the Committee felt that more information was necessary to understand how the system of criminal procedure worked in Spanish law and to clarify how incommunicado detention was regulated. Further information was necessary also about the appointment, the legal status and the functions of the Parliamentary Commissioner and about his recent reports on allegations of torture and ill-treatment in places of detention. In addition, members of the Committee asked whether, in Spanish law, habeas corpus could be invoked in the case of a detention ordered by a judge; how appeals for amparo to the Constitutional Court, as referred to in the report, applied in practice; what effects a judgement by the Constitutional Court had in a case involving torture; and why the competent court to try offences committed by members of the National Police and the Civil Guard was the Provincial Court itself, and not a court of first instance.

61. With reference to article 1 of the Convention, the question was raised as to whether the term "torture" and the terms "cruel, inhuman or degrading treatment" were specifically defined under Spanish law.

62. Turning to article 2 of the Convention, members of the Committee noted that article 55, paragraph 2, of the Spanish Constitution authorized the suspension of the constitutional provisions, establishing the maximum period of 72 hours for pre-trial detention in the case of offences committed by armed terrorist bands. They wished to know how the Constitutional Court had interpreted the possibility of extending the period beyond the 72 hours; whether the right to be assisted by a lawyer, which was guaranteed by the Constitution, also operated in the case of terrorism and whether persons held under anti-terrorist laws enjoyed the same right as other detainees to inform their families of their detention. Members of the Committee also asked what measures had been taken in Spain to ensure that a detainee could in practice avail himself of the right to be examined by a forensic surgeon. Members requested the text of the order concerning medical assistance for detainees issued by the Ministry of the Interior on 11 June 1981. In addition, they wished to know what the basic rules were in conducting interrogations, whether forensic surgeons were independent, whether they were answerable to prison governors or to the Ministries of Justice or Health, by whom they were appointed and whether detainees were able to obtain a second opinion from their own doctor. Noting that, according to information provided by non-governmental organizations such as Amnesty International, a person in pre-trial detention was unable to choose his own lawyer, did not have his family informed of his detention and could not consult a lawyer of his choice until the end of the period of pre-trial detention, members requested clarification.

63. In connection with article 3 of the Convention, it was asked whether the provisions concerning the refusal to expel or return ("refoulement") were reflected in Spanish law in all their aspects.

64. With reference to article 4 of the Convention, it was inquired whether the Spanish Criminal Code contained a specific definition of torture and whether there had been any prosecutions for torture and, if so, how many and with what results. Members of the Committee observed that, in order to be classified as torture under Spanish law, it appeared from the report that offences had to be committed for the purpose of obtaining a confession. If that was so, members asked whether and how acts of torture committed in order to intimidate or punish were punished by Spanish criminal law, as required by the Convention.

65. Referring to article 5 of the Convention, members of the Committee sought clarification as to the application of the principle of universal jurisdiction under Spanish law. They wished to know, in particular, whether the jurisdiction of Spanish courts concerning offences under the Convention was automatic by virtue of the self-executing nature of the Convention in the Spanish legal system or whether some types of jurisdiction, such as territorial jurisdiction, had to be established by internal law.

66. With reference to article 8 of the Convention, it was asked whether Spain considered that the Convention afforded a legal basis for extradition in cases involving States with which it had not signed a treaty on extradition.

67. With regard to article 10 of the Convention, members of the Committee wished to receive detailed information concerning the organization and content of training programmes promoting human rights and prohibiting torture for officials who dealt with persons subjected to detention or imprisonment. They also asked whether such training applied to military personnel and medical personnel, particularly doctors operating in psychiatric institutions, and whether any guidance was given to doctors attending patients on hunger strike.

68. With reference to article 11 of the Convention, a description of the structure of the Spanish prison system was requested. Detailed information was sought particularly on the circumstances in which solitary confinement was applied and on the number of persons being held in solitary confinement.

69. With regard to article 12 of the Convention, it was asked how many criminal proceedings for torture had been instituted by the Department of Public Prosecutions in the last five years and what the results of such proceedings had been.

70. With reference to article 13 of the Convention, it was noted that the Parliamentary Commissioner in Spain had commented on the discrepancy between the number of complaints filed in respect of allegations of ill-treatment of prisoners and the number of cases actually solved, and it was asked what the results of the investigation into the matter had been. Members of the Committee also wished to know whether allegations made in September 1989 relating to 46 cases of torture had led to criminal proceedings and, if so, how many complaints had been filed and what sentences had been handed down. In addition, clarification was sought as to whether proceedings under the Criminal Prosecution Act could be instituted by individuals as complainants or as private prosecutors.

71. In connection with article 14 of the Convention, members of the Committee wished to receive information about any court decisions interpreting article 22 of the Spanish Penal Code, which extended subsidiary responsibility to the State for acts committed by its officials, the procedures followed, the types of redress and compensation granted, the number of persons receiving compensation and the amounts involved and any programmes of physical or mental rehabilitation for victims of torture.

72. Lastly, clarification was requested of the statement in the report that, although Spanish legislation did not contain any specific provisions with regard to article 15 of the Convention, the gap had been filled by court decisions.

73. Replying to questions raised by members of the Committee, the representative of Spain stated that the Convention could be invoked directly before the Spanish courts by virtue of the fact that it had been incorporated into Spanish internal law. The functions of the judicial police were performed by the State Security Forces, comprising both the National Police and the Civil Guard. Those forces carried out arrests, and were responsible for protecting the free exercise of fundamental rights and freedoms, for ensuring the security of citizens and for carrying out investigations.

74. The Parliamentary Commissioner was elected by a qualified majority of the Cortes, was independent, was empowered to monitor government activities, and drew up an annual report on his extremely varied activities which was examined by Parliament. He was also empowered to transmit any complaints of torture to the Government Procurator's Office so that the latter could initiate criminal proceedings if deemed necessary.

75. The representative provided detailed information on remedies available to individuals in Spain. The remedy of habeas corpus could be invoked and no one could be unlawfully arrested or detained. Amparo could be invoked after all other remedies had been exhausted if any of the constitutionally guaranteed fundamental rights had been breached. An application for amparo could also be made to the Constitutional Court if rights that were not considered fundamental had been breached. Confirming the fact that members of the security forces were tried directly by the Provincial Court, a court of second instance, the representative explained that the origins of that somewhat controversial system lay in the notion that higher-ranking judges were less likely to be influenced or intimidated by members of the police. Ordinary offenders had to be informed within 24 hours of their rights according to the Constitution and the Code of Penal Procedure. After 72 hours of custody the detainee had to be released or placed at the disposal of the judge.

76. As to the definition of acts of torture under Spanish law, the representative stated that the definition given in article 1 of the Convention was directly applicable in Spain and that any official found guilty of such acts was liable to the penalties set out in the Penal Code.

77. With reference to article 2 of the Convention, the representative said that a distinction was made among detainees depending on whether they were ordinary offenders or members of terrorist groups, armed gangs or organized groups such as drug traffickers. The latter were held incommunicado and were not allowed to choose their counsel but were assisted by an assigned counsel. They could be kept in custody for a period longer than 72 hours, but not exceeding five days. While in custody, detainees could be interrogated in the presence and with the assistance of their counsel and they were informed of their rights. The trial procedure was the same for all detainees regardless of the category to which they belonged. A statement made by a detainee was invalid if he appeared to have been ill-treated or brutalized. All prisoners were entitled, as soon as they were arrested, to be examined by a doctor. The text of the order concerning assistance for detainees issued by the Ministry of the Interior would be made available to the Committee. The functions of the forensic surgeon were defined by the Courts Organization Act and the diagnosis was never questioned. If they so desired, judges could visit Civil Guard premises or police stations to verify the treatment given to suspected members of organized groups who were being held incommunicado.

78. Referring to article 3 of the Convention, the representative stated that the Council of Ministers was responsible for considering applications for extradition and for deciding whether to transmit them to the National High Court in Madrid. Extradition was granted or refused by the political authorities depending on whether that body approved or rejected the application. The Spanish Government was kept informed through diplomatic channels of the situation in the country requesting the extradition.

79. With regard to article 4 of the Convention, the representative noted that Organization Act No. 3/1989 defined certain forms of violence that left no trace and provided for the relevant penalties and that article 420 bis of the Penal Code covered internal or external injuries caused by ill-treatment. Recourse to torture was formally prohibited whether as punishment, or as means of obtaining a confession. The Parliamentary Commissioner's report mentioned a number of complaints recently lodged against certain officials but added that they related to isolated and quite exceptional occurrences.

80. Referring to article 10 of the Convention, the representative stated that prevention and prohibition of torture were incorporated into all the training programmes of officials who dealt with persons subjected to detention or imprisonment, including forensic surgeons and prison doctors. On 26 November 1990, prison doctors together with police and Civil Guard officials were to take part in a training programme specially organized for them in Strasbourg.

81. In connection with article 13 of the Convention, the representative noted that a complaint made by members of the terrorist group GRAPO, alleging artificial or forced feeding while they had been on a hunger strike, was currently being examined by the European Commission on Human Rights. No abuse of authority had been signalled when the "Araba" commando was taken into custody on 19 September 1989.

82. With regard to article 14 of the Convention, the representative said that the principle of State responsibility for acts committed by its officials was reflected in several constitutional and legislative provisions. The actual amount of compensation in cases involving the responsibility of the State was determined by the judicial authority on a case-by-case basis.

83. In connection with article 15 of the Convention, the representative stated that the decisions of the Constitutional Court referred to in the report implied that any evidence obtained by unlawful means, i.e. means incompatible with the rights guaranteed by the Constitution, was inadmissible.

84. Finally, the representative stated that Spain would provide more detailed information on issues raised by the members of the Committee in its second periodic report.

Concluding observations

85. In their concluding remarks, members of the Committee thanked the representative of Spain for his detailed replies. They were of the view that Spain was endeavouring to respect its obligations under the Convention and that Spanish law embodied a number of relevant standards. In that connection, they said that it would be very useful to have at their disposal the texts of all the laws and regulations which had been mentioned in the report.

86. The members of the Committee were, none the less, concerned about certain issues relating to the implementation by Spain of the Convention, such as the direct application of its provisions in Spanish internal law. They considered that Spanish domestic law should provide a definition of torture that matched the terms of the Convention and, where the application of criminal law was

concerned, universal jurisdiction should be clearly established in domestic legislation.

Turkey

87. The Committee considered the initial report of Turkey (CAT/C/7/Add.6) at its 61st and 62nd meetings, held on 14 November 1990 (CAT/C/SR.61 and 62).

88. In his introduction, the representative of the State party noted that the Turkish Constitution contained provisions relating to the protection of the physical and mental integrity of the individual as well as to the prohibition of torture. International instruments to which Turkey was a party became part of national legislation and could be applied directly by the courts and other authorities. No appeal could be made to the Constitutional Court with regard to international agreements on the ground that they were unconstitutional. Turkey was a party to the European Convention on Human Rights and recognized the competence of the European Commission on Human Rights and the European Court of Human Rights with regard to individual recourse procedures. As a party to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Turkey had accepted the competence of all monitoring mechanisms established under those Conventions.

89. The Government of Turkey gave primary importance to preventive measures in combating torture. Those measures included the teaching of human rights in police schools, the organization of courses for security and other public officials, and several legislative provisions concerning the presumption of innocence, the right to legal counsel, the prompt notification of a person's detention to his relatives, the right not to answer questions, testimony free from any kind of pressure and medical examination by independent forensic doctors of all detainees before and after detention and interrogation.

90. Other improvements had also been adopted recently to Turkey's legislation concerning conditions of imprisonment and detention. Public prosecutors were required ex officio to investigate any allegations or reports of torture. Turkish citizens could avail themselves of recourse procedures both at the national and the international level and the Turkish State was directly responsible for any abuses committed by public officials. Constitutional and other legal provisions provided for compensation to persons who had been unlawfully arrested, detained or subjected to torture, or who had suffered any damage caused by an abuse of State power.

91. In addition, the representative informed the Committee that the Turkish Penal Code was under review and that, according to the first set of draft amendments, sentences for torture were to be doubled, the period of pre-trial detention considerably reduced and provision made for compulsory legal counsel, if necessary at State expense. A proposal had also been submitted concerning the establishment of a parliamentary commission on human rights which would have broad powers.

92. Members of the Committee thanked the Government of Turkey for its report which they considered informative. They noted that the report gave a comprehensive review of the Turkish judicial system and the formal safeguards

against torture in Turkey, but dealt with substantive issues rather briefly. They observed, in this connection, that a large number of allegations of torture concerning Turkey had been received by various international bodies and that the Turkish Government itself had acknowledged that torture had not yet been eradicated in the country. They therefore regretted that the report did not clearly explain that situation.

93. Members of the Committee also welcomed the fact that Turkey was a party to virtually all the international human rights instruments aimed against torture, but expressed regret that the provisions of the Convention had not yet been fully incorporated into domestic legislation. Noting that Turkey had recognized the competence of the European Commission on Human Rights to receive petitions from any person, non-governmental organizations or groups of individuals, members wished to know how that decision was implemented in practice. Clarification was also requested of the interim decision taken by a military court, referred to in the report, with regard to the legal status of the Convention.

94. In connection with the general framework in which the Convention was implemented in Turkey, members of the Committee wished to know what guarantees ensured the independence of the judiciary and requested more information on the law enforcement system in the country. They asked, in particular, what functions were performed by the State Security Courts and how they were composed, what were the status and the role of prosecutors, whether the judges in the Prosecutor's Office were removable and how often, and in what part of the country emergency legislation had been in force in the last two years. In addition, detailed information was requested on the separate organization of the ordinary courts as well as on the application in practice of the jurisdiction of military courts in so far as it extended to civilians. It was asked, in particular, what procedures and guarantees applied in such cases.

95. Referring to article 1 of the Convention, members of the Committee asked whether there was any specific definition of torture under Turkish law and, if not, whether the definition contained in the Convention had been incorporated directly into internal law and what punishment was provided for torture.

96. With regard to preventive measures under article 2 of the Convention, members of the Committee wished to know what effective guarantees existed in Turkey in respect of article 19 of the Constitution, which defined the conditions in which individuals suspected of having committed an offence could be arrested. Expressing concern at the fact that the period of pre-trial detention could be extended to 15 days in the case of collective crimes, which was an unusually long period, members of the Committee wished to know whether such extension was subject to review, whether it required approval of the courts or could be decided by the Public Prosecutor himself, and what time-limits were applied under emergency legislation. They also wished to receive clarification as to the cases where a person's arrest or detention was not communicated to the family of the detainee and as to the authority that was responsible in the matter. They asked, in particular, what the time-limit was for solitary confinement in such cases, whether the detainee was denied access to counsel and at what moment that restriction was lifted. While welcoming the provisions Turkey had adopted with regard to medical examinations of detainees, members of the Committee observed that there was a discrepancy between the comprehensive nature of those provisions and the

considerable number of complaints filed. They also wished to know how many detainees there were at present in Turkish prisons, and who was responsible for law enforcement in places of detention.

97. Referring to information provided particularly by non-governmental organizations with regard to political activists, journalists and prisoners of conscience held in detention in Turkey, members of the Committee wished to know the number of such detainees, how many such persons were currently facing the death penalty, whether those who had been convicted, as distinct from persons in pre-trial detention, were subjected to solitary confinement and, if so, how long such confinement could last, and what authority was responsible for ordering solitary confinement. Additional information was also requested on the role of the Prosecutor's Office and the State Council in protecting citizens against torture, as well as on the progress made in establishing the proposed parliamentary commission on human rights and on its programme of work and powers. Recalling that a large number of allegations of torture in Turkey had been brought to their attention by various reliable sources, members of the Committee wished to know what the Turkish Government intended to do to improve the measures taken to prevent torture and to ensure that the legislation prohibiting torture was effectively implemented.

98. Referring to article 3 of the Convention, members of the Committee wished to know what measures had been taken by the Turkish authorities to guarantee that the principle of non-refoulement was applied in respect of non-European asylum-seekers, especially Iraqi refugees of Kurdish origin who, according to various sources, were subjected to restrictive measures in an attempt to force them to return to Iraq against their will.

99. With regard to article 4 of the Convention, it was observed that although the Turkish Penal Code banned ill-treatment of prisoners, it was necessary to define what the concept of ill-treatment actually covered. Turkish law also did not appear to contain a clear definition of what constituted an act of torture and the penalties applicable for acts of violence were not commensurate with the grave nature of acts of torture, required by the Convention.

100. In connection with article 5 of the Convention, members of the Committee wished to know the reasons why, according to the figures provided in the report, there was a disproportion between the large number of allegations of torture in Turkey and the small number of sentences imposed on policemen for committing acts of torture. They also asked whether the legislation referred to in the report in relation to the principle of universal jurisdiction would be brought into line with articles 5 and 7 of the Convention.

101. In connection with articles 6 and 8 of the Convention, it was asked how the Turkish authorities discharged their obligation under the Constitution to prevent the escape of individuals suspected of having committed torture and whether tne provisions of article 8 of the Convention were directly applicable in Turkey.

102. Turning to articles 10 and 11 of the Convention, members of the Committee asked whether, in addition to human rights programmes for policemen, similar training programmes existed in Turkey for prison, military and medical

personnel, how conditions in prisons were reviewed, and whether the Standard Minimum Rules for the Treatment of Prisoners were applied.

103. With regard to articles 12 and 13 of the Convention, members of the Committee wished to know whether the Turkish Government planned to establish an independent authority to examine allegations of torture, how many complaints had been received by the authorities about unlawful action by officials, how many persons had died in detention, whether the circumstances of their deaths had been investigated, and what the difference was in jurisdiction between minor courts and courts of first instance as far as allegations of torture were concerned.

104. In connection with article 14 of the Convention, it was asked whether the concept of State responsibility applied in cases where it was impossible to identify the persons responsible for acts of torture, whether the authorities could be held responsible on the grounds of omission, how victims of torture could obtain compensation, whether an amount to be paid was envisaged, whether Turkey had made any provisions comparable to those of the criminal injury compensation schemes adopted by other States, and whether there were any rehabilitation programmes for victims of torture.

105. Finally, members of the Committee wished to know how Turkey ensured that confessions obtained by coercion were not accepted by the State Security Courts or other courts, whether there was any plan to enact relevant legislation, for how long a person could be kept in detention while the circumstances in which his confession had been obtained were being determined, whether there was any remedy in that regard, and how article 15 of the Convention had been incorporated into Turkish legislation and applied by the judiciary.

106. In his reply, the representative of the State party stated that military courts tried only military personnel and were competent to try civilians only when they had committed military offences during their military service and had not been tried during that period. The courts martial had jurisdiction only during a state of emergency or to try cases that had subsequently remained pending. The State Security Court was a court of special jurisdiction which tried only cases involving security problems. The Council of State was the supreme administrative court which established the responsibility of the State and, where necessary, ordered compensation to be paid to victims. The judges and prosecutors of all courts were appointed by the Higher Council of the Judiciary and they were responsible to it. All judges were independent and could not be removed. Prosecutors had no special status. The functions of judges and prosecutors were set forth in articles 138 to 140 of the Turkish Constitution. The representative also pointed out that, so far, 13 individuals had availed themselves of their right to submit applications to the Court of Human Rights under the European Convention on Human Rights, and that, since July 1987, the state of emergency applied to 10 provinces of Turkey and concerned approximately 4.5 million inhabitants out of a total population of some 60 million.

107. With reference to article 1 of the Convention, the representative said that the definition of torture contained therein was recognized in Turkish law and reflected in articles 243 and 245 of the Penal Code.

108. With regard to article 2 of the Convention, the representative stated that responsibility for applying article 19 of the Constitution was vested in independent judges. Referring to the duration of detention for persons involved in collective offences, he explained that the question concerned only a small percentage of all detainees and that detention periods were to be shortened under the bill of amendments to the Code of Criminal Procedure mentioned in the report which covered emergency legislation. The families of persons arrested or detained were informed first of all by the police and then by the prosecutor. Only the judge was empowered to prolong detention. Law enforcement was the responsibility of the security forces. The number of detainees in Turkish prisons was at present approximately 50,000.

109. Furthermore, the representative pointed out that prisoners of conscience sentenced for an offence against the State were small in number. On the other hand, approximately 3,000 persons were still being detained or had been sentenced for having committed acts of violence, particularly acts of terrorism, over the past 10 years. A death sentence could not be carried out without the approval of Parliament, which currently had approximately 270 death sentences before it. Since November 1984, no condemned person had been executed. Being held incommunicado in prison was only a disciplinary measure which had now been abolished. The parliamentary commission on human rights would concentrate mainly on the preparation of new laws. The results of its work would be communicated in the next periodic report.

110. The representative denied that his Government was seeking to compel Iraqi citizens housed in temporary reception centres to return to their country. For the past two years Turkey had been appealing to all the parties interested in the fate of those displaced persons to shoulder their responsibilities and to find means of resettling them, but so far its appeals had remained unheeded. The reception centres in question were open and Turkey was working together with the United Nations High Commissioner for Refugees.

111. With reference to article 4 of the Convention, the representative pointed out that the punishment that could be imposed on perpetrators of torture varied according to the seriousness of the offence and could amount to as much as 10 years' imprisonment. Moreover, the penalties provided for in the Penal Code could be doubled. If the perpetrator of an act of torture could not be identified, the State became responsible. An action for compensation could be brought against the Ministry of the Interior.

112. In connection with article 5 of the Convention, the representative provided detailed information about the number of alleged cases of torture brought before the courts in Turkey. The difference between the number of complaints made and the number of sentences handed down for torture was explained by the fact that only cases already tried were indicated. There were still 354 persons charged with torture who had not yet been tried.

113. Referring to articles 8 and 15 of the Convention, the representative considered that their provisions were directly applicable in Turkey.

114. With regard to articles 10 and 11 of the Convention, the representative stated that in Turkey forensic physicians were fully independent and that prison doctors and warders were provided with human rights training, although resources allocated to such activities were limited. As to the improvement of

prison conditions, he referred to relevant information submitted to the Subcommission on Prevention of Discrimination and Protection of Minorities.

115. Referring to article 12 of the Convention, the representative affirmed that when a person died in prison, an inquiry was immediately made and that there had been no case of death under torture.

116. In connection with article 14 of the Convention, the representative said that the amount of damages paid to victims of torture in Turkey was proportionate to the seriousness of the injury suffered. Turkey had no network of voluntary organizations concerned with the rehabilitation of torture victims.

Concluding observations

117. Members of the Committee thanked the representative of Turkey for his frank replies. The report and the oral explanations presented showed that the Turkish Government had clearly embarked upon a process of legislative reform. Nevertheless, it should take steps specifically to put an end to the practice of torture which was still widespread in the country. The Turkish Government was aware of the concern which that situation was arousing within the international community and was endeavouring to remedy it. It was to be hoped that its efforts would lead to concrete results which should be reflected in Turkey's next periodic report. For its part, the Committee would continue to pay close attention to events in Turkey in the hope that the problem of torture would finally be eliminated and that all persons responsible for committing acts of torture would be duly punished.

Ecuador

118. The Committee considered the initial report of Ecuador (CAT/C/7/Add.7) at its 61st meeting, held on 14 November 1990 (CAT/C/SR.61).

119. The report was introduced by the representative of the State party, who stressed that human rights education, training and information for law enforcement officials and members of the military were being provided by the Ecuadorian Government and various national institutions to combat torture and to ensure that human rights were properly perceived as being essential to the maintenance of social stability. He drew particular attention to the establishment in his country, with the participation of the Catholic Church and the Latin American Association for Human Rights, of a high-level, inter-agency commission to monitor police procedures and investigate complaints of human rights violations. A Special Commission of Inquiry, composed of lawmakers from all political parties represented in Congress and which had broad investigatory, administrative and educational functions in connection with complaints of human rights violations, had also been established.

120. Members of the Committee welcomed the efforts being made in Ecuador to promote human rights and, more specifically, to eliminate the practice of torture. However, they regretted that the report provided insufficient information on the measures Ecuador had actually taken to give effect to its undertakings under the Convention. Moreover, the report did not comply with the general guidelines established by the Committee for the preparation of

initial reports of States parties and did not provide the text of national legislative provisions relevant to the implementation of the Convention.

121. With regard to the general legal framework in which the Convention was implemented in Ecuador, members of the Committee observed that clear and comprehensive information was necessary on how international instruments were incorporated into Ecuadorian law and on whether Ecuadorian legislation contained provisions of wider application than those contained in the Convention. In addition, detailed information was necessary on the structure of the judiciary in Ecuador, the procedures existing in the country permitting applications for redress, the functioning and impact of the Tribunal of Constitutional Guarantees, the organization and scope of educational and information activities relating to the fight against torture and on the mandate and functioning of the Special Commission of Inquiry. Members of the Committee also wished to know whether the provisions of the Convention could be applied directly; whether remedies or rehabilitation programmes existed, and what the actual situation was with regard to the practical implementation of the Convention and in respect of the difficulties affecting the fulfilment of Ecuador's obligations thereunder.

122. In that connection, members of the Committee noted that they had received information on allegations of torture in Ecuador from various non-governmental organizations and requested detailed information especially on events that had occurred in January and March 1990, in connection with which a prison governor had publicly denounced the Criminal Investigation Department for torturing prisoners. They also asked what remedial action had been taken by the Ecuadorian Government to improve the situation.

123. Referring to specific articles of the Convention, members of the Committee wished to know whether the definition of torture contained in article 1 of the Convention was fully covered in Ecuadorian law and whether acts of torture were identified and dealt with in Ecuador's Penal Code and Code of Criminal Procedure, as required by article 4 of the Convention.

124. In connection with article 2 of the Convention, members of the Committee stated that the adoption by States parties of measures to prevent acts of torture were extremely important. Questions relating to authority to arrest, the duration of pre-trial detention, the rules governing incommunicado detention, the guarantee of medical examinations and, in general, issues of a practical, procedural and functional nature should therefore have been reported on in far greater detail. The relationship in such matters between the authority of police officers and that of magistrates or judges also needed to be clarified.

125. Clarification was also requested as to whether the Aliens Act and the Regulations on Aliens satisfied the requirements of article 3 of the Convention and whether the provisions of title I, article 5, of the Ecuadorian Penal Code and article 3 of the Ecuadorian Code of Criminal Procedure satisfied the requirements of article 5 of the Convention.

126. In addition, members of the Committee observed that more detailed information with regard to articles 6 to 15 of the Convention was necessary to understand how their provisions were actually implemented. They stressed the need to receive, in particular, factual information on important issues such

as specific cases of torture; their frequency; the kind of officials involved; the number of complaints made, investigations undertaken and sentences handed down, with examples; cases in which compensation had been paid and the amount thereof; as well as information on the implementation of the principles of non-refoulement and universal jurisdiction.

Concluding observations

127. In conclusion, and in view of the large number of questions raised, the Committee, pursuant to rule 67, paragraph 2, of its rules of procedure, requested the Government of Ecuador to submit to the Committee an additional report containing the information requested in accordance with the requirements of the Convention and the Committee's general guidelines. It also invited the Government of Ecuador to submit its additional report by the end of February 1991 in time for it to be considered at the sixth session of the Committee in April 1991.

128. The representative of Ecuador finally stated that he had taken note of the comments made by the Committee on his country's initial report and that his Government would be able to supply an additional report in accordance with the Committee's guidelines in time for the Committee's sixth session.

Greece

129. The Committee considered the initial report of Greece (CAT/C/7/Add.8) at its 63rd and 64th meetings, held on 15 November 1991 (CAT/C/SR.63 and 64).

130. In his introduction to the report, the representative of the State party informed the Committee that the question of adherence to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment had been recently submitted to the Greek Parliament. As soon as that instrument had been approved, Greece would be bound by all the international instruments aimed against torture.

131. The members of the Committee welcomed the report, which complied with the Committee's general guidelines and which was clear and informative on the de jure and de facto situation regarding the implementation of the Convention. They also welcomed the commitment of Greece to the eradication of torture, which was reflected, inter alia, by its acceptance of the optional provisions of articles 21 and 22 of the Convention. They felt, however, that some additional information was needed on certain issues relating, in particular, to articles 10 to 13, 15 and 16 of the Convention.

132. Members of the Committee noted that the provisions of the Convention had been well incorporated into Greek legislation, but they wished to know more about their practical implementation in the country and about any problems which might have been encountered in that respect. In that connection, they wished to receive details on persons actually convicted of torture before and after Greece had ratified the Convention. They also observed that the Convention was not entirely self-executing and asked what steps had been taken under Greek law to ensure the implementation of provisions of the Convention, such as those contained in its articles 4, 5, 10 and 11, which were not automatically applicable. In addition, further information was requested on the functions of judicial bodies, particularly the Prosecutors' Office, and

their role in preventing and punishing torture, on specific examples of criminal cases in which reference had been made to the European Convention on Human Rights, and on legal provisions establishing the right to individual petition under article 25 of that Convention. It was also asked whether there was any procedure that could lead to the dismissal of prosecutors and judges and how conflicts of opinion, if any, between authorities that could order the institution of criminal proceedings were resolved.

133. With reference to the information provided in the report on the period of the colonels' dictatorship in Greece, it was asked what measures had been taken to prosecute those responsible for torture or ill-treatment during that period, whether the victims had received any form of compensation and whether it was still possible to prosecute persons for acts committed during the colonels' regime.

134. Referring to article 1 of the Convention, members of the Committee wondered whether the prohibition and elimination of torture as defined in the Convention were fully provided for by Greek law. In that connection, they expressed the wish to receive the full text of article 137 of the Greek Penal Code in order to clarify that point.

135. In connection with article 2 of the Convention, more information was requested on the duration and conditions of pre-trial detention. It was asked, in particular, which officials had the right to arrest and what guarantees the person arrested had during the period of custody, whether those responsible for breaches of the provisions governing pre-trial detention were criminally responsible, whether anyone had been prosecuted for such offences, what external or internal supervision was exercised over the actions of the police forces, how conditions of detention were monitored, what was meant by the terms "indictment division" and "correctional division", referred to in the report, and what legal measures had been taken to implement paragraph 3 of article 2 of the Convention.

136. With reference to article 3 of the Convention, members of the Committee sought clarification of the reasons for the broad interpretation given by Greek authorities to article 33 of the Convention relating to the Status of Refugees, of administrative practices in that regard, and the number of foreigners who had been extradited in the past five years. They also asked how long an asylum-seeker was required to wait for a decision on his or her case and what living conditions were like during that time.

137. With regard to article 4 of the Convention, it was asked what the difference was, under article 6 of the Greek Constitution, between an offence and a crime and which legislative acts contained relevant lists or definitions; whether any persons guilty of torture had been prosecuted, convicted and punished; what were the contents of Act No. 1500/84 relating to the criminal punishment of persons guilty of torture; and why the penalties applicable to acts of torture ranged from five years' to life imprisonment.

138. On the subject of universal jurisdiction, members of the Committee wondered whether the implementation of articles 5 to 8 of the Convention was actually guaranteed under Greek law. They asked, in particular, whether a foreigner accused of having practised ill-treatment or torture upon another foreigner in a foreign country could be prosecuted in Greek courts, whether

torture was one of the crimes committed abroad which were punishable under article 8 of the Greek Penal Code, whether international and internal provisions relevant to extradition could conflict and whether, for the purpose of a decision or extradition, the requirement of a prison sentence of over two years was in any way subdivided.

139. Turning to articles 10 and 11 of the Convention, members of the Committee wished to know whether there were any educational programmes and instructions to prevent and eradicate torture for the police, the armed forces, medical personnel and prison officers. They also requested detailed information about the treatment of persons in detention and about any allegations and inquiries concerning torture or ill-treatment in the prison system.

140. More generally, and in connection with articles 12 and 13 of the Convention, members of the Committee wished to know how many complaints of torture or ill-treatment had been received by Greek judicial authorities, how those complaints had been investigated, and how many persons had been convicted in such cases. They also wished to know at what stages of the proceedings an accused person's lawyer was or was not permitted to be present, why in one of the cases described in the report the Public Prosecutor had not instituted criminal proceedings until the facts had been brought to the attention of the international community, and whether, apart from filing complaints with the Public Prosecutor or another official responsible for investigation proceedings, there were any channels for seeking redress or compensation, such as an independent human rights commission or an ombudsman's office.

141. With reference to article 14 of the Convention, more detailed information was requested in respect of redress and rehabilitation for victims of torture. It was asked, in particular, what the amounts and sources of financial compensation paid to victims were, whether the procedure to seek redress took place automatically or had to be instituted by the victim, whether the right to redress was covered by the Greek Civil Code in addition to the Penal Code, whether the State assumed responsibility for Government officials if the latter were found guilty of acts of torture, and whether any other administrative process existed in Greece to provide compensation to victims of torture.

142. Referring to article 15 of the Convention, members of the Committee wished to know what was the legal basis for guaranteeing that evidence obtained under torture would not be taken into consideration by the courts.

143. In his reply, the representative of Greece stated that the implementation of the Convention in his country had not given rise to any difficulties. The Convention had not been expressly invoked before the Greek courts and the courts had not handed down any decisions based on it since that instrument had only recently been ratified by Greece. The right to individual petition before the European Commission on Human Rights had been recognized on the basis of a declaration of the Minister for Foreign Affairs. The representative further provided a detailed description of the functions of the public prosecutor in accordance with the Greek Code of Penal Procedure and provided information on the procedure applied in case the prosecutor failed to institute proceedings. In the event of a disagreement during an investigation between the examining magistrate and the public prosecutor, the decision was

taken by a three-member court composed of a presiding judge and two other judges. Public prosecutors enjoyed the same status as judges and, like the latter, were appointed for life and subject only to the authority of a disciplinary council composed of senior judges and prosecutors.

144. The representative stated that after the fall of the dictatorship in his country, special legislation had been enacted to provide compensation for the victims and that, in particular, disability pensions had been awarded to victims of torture. Torturers had been tried and received harsh sentences. No amnesty law had been adopted for acts committed under the colonels' regime, but acts for which no proceedings had yet been instituted were subject to prescription in accordance with the conditions established by the Penal Code.

145. Referring to article 2 of the Convention, the representative stated that the trial of persons accused of a crime had to take place within 12 months after the warrant of pre-trial detention had been issued. Such warrants could be extended to 18 months and the accused was entitled to appeal against them. A person arrested flagrante delicto or pursuant to a warrant had to be brought before the examining magistrate within 24 hours. Police officers were both authorized and bound to arrest any person in the act of committing a crime. From the time of arrest, the accused enjoyed all the rights of detainees including the right to consult and be defended by a lawyer of his choice. Investigating authorities were bound to inform the accused of his rights. Failure to observe the rights of an arrested person was punishable by up to five years' imprisonment. The provision whereby the order of a senior officer constituted no justification for an unlawful act had been incorporated in the Greek Penal Code in 1984.

146. With regard to article 3 of the Convention, the representative referred to a document submitted to the United Nations High Commissioner for Refugees containing the Greek definition of a refugee and the conditions in which asylum was granted by Greek authorities. The document was available to the Committee. He pointed out that the length of the procedure for the granting of asylum varied from case to case.

147. Referring to article 4 of the Convention, the representative indicated that, in accordance with Greek law, an offence was punishable by up to five years' imprisonment and a crime by more than five years' imprisonment or the death penalty. In Greece, torture was a crime.

148. With regard to universal jurisdiction, the representative explained that article 2 of the Greek law ratifying the Convention expressly provided that Greek criminal legislation applied to nationals and to foreigners for any offence that was covered by article 4 of the Convention, in accordance with the conditions laid down in article 8 of that instrument. The law in question recognized the jurisdiction of Greek courts in respect of complaints of acts of torture regardless of where they had been committed. According to the Greek Code of Criminal Procedure, if a crime that was punishable universally and by Greek law had been committed abroad by a foreigner who was in Greek territory, the Greek courts had jurisdiction to try that crime without extraditing the accused. In accordance with article 8 of the Greek Penal Code, Greek courts had jurisdiction in respect of any criminal act for which international treaties ratified by Greece provided for the application of Greek criminal legislation, regardless of the nationality of the person who

had committed the act and regardless of the legislation of the country in which the act had been committed. International instruments took precedence over internal law. In the absence of any international treaty, the Greek Code of Penal Procedure applied. Extradition was thus possible only in connection with an act punishable by a prison sentence of more than two years, unless an international agreement provided otherwise.

149. With reference to articles 10 and 11 of the Convention, the representative stated that police officers and prison officials were taught about human rights and the prohibition of torture as part of their normal instruction. Legislation on the Greek prison system enacted in 1989 provided for treatment designed to achieve the social rehabilitation of prisoners. Although such provisions were considered satisfactory, Greek authorities acknowledged that their implementation gave rise to difficulties since prisons in Greece were overcrowded and no new prisons had been built in the past 20 years owing to the shortage of funds.

150. In connection with article 12 of the Convention, the representative referred to three cases where police officers had been accused of committing acts of torture. In one case, the accused had been acquitted and the other two cases were still pending before the courts.

151. In relation to article 14 of the Convention, the representative stated that it was impossible to set standards relating to compensation for torture victims in Greece since the amount depended on the specific circumstances of each case and compensation was granted only where the victim had submitted a request for it.

Concluding observations

152. In their concluding remarks, the members of the Committee welcomed the oral replies of the representative of Greece to their questions and expressed the wish to receive from the Greek Government, in its next periodic report, detailed information on the situation of detainees and the regime applicable to them.

153. The representative of Greece assured the Committee that his Government would not fail to provide the information requested.

Netherlands Antilles and Aruba

154. The Committee considered the initial report of the Netherlands Antilles (CAT/C/9/Add.2) and the additional report of Aruba (CAT/C/9/Add.3) at its 63rd and 64th meetings, held on 15 November 1990 (CAT/C/SR.63 and 64).

155. The reports were introduced by the representatives from those two autonomous parts of the Kingdom of the Netherlands.

156. The representative from the Netherlands Antilles provided information on the social and legal structure of the islands. He pointed out that the judiciary, the executive power and the legislature of the islands were governed by the same principles as were found in the Constitution of the Netherlands. The independence of the judiciary was guaranteed by the Constitution of the Netherlands Antilles. Judges were appointed for life.

The Supreme Court of the Netherlands had the power of cassation in the Netherlands Antilles. Torture was not prohibited as such by the Constitution or by the Criminal Code of the Netherlands Antilles. However, certain provisions of the Constitution, the Criminal Code and the Code of Criminal Procedure dealing with the protection of the person contained measures which included the prevention and punishment of acts of torture. A draft Code of Criminal Procedure was now before the Parliament of the Netherlands Antilles and the commission that had drafted it would soon embark upon a revision of the Criminal Code. In that revision, consideration would be given to the need to introduce a provision whereby torture as such was expressly rendered punishable. In this connection, special attention would be given to universal jurisdiction in respect of torture and a study would be made to determine to what extent it was necessary to add the prohibition of torture in the Criminal Code.

157. Efforts were being made by the Netherlands Antilles to create and develop mechanisms for discharging obligations arising under treaties and statutes, and a number of priority measures had recently been taken to optimize the operation of the police force and to improve the prison system, and to exercise closer supervision over both. The Public Prosecutor's Office was required to examine every complaint concerning police behaviour, to condemn every form of torture and to institute criminal proceedings if torture occurred. Any interested party could file a suit with an independent court if the prosecution had not done its work properly. Victims of torture were entitled to seek redress by suing the State for damages both under the Code of Criminal Procedure and in a civil action for tort. The Netherlands Antilles provided requesting States with judicial assistance even in the absence of a treaty and it was making every effort to meet its obligations under the Convention within the limits of its capabilities as a developing country.

158. The representative from Aruba noted that the legal and judicial structures of the island were almost the same as those of the Netherlands Antilles. While the Constitution of Aruba did not expressly prohibit torture, it contained provisions under which torture would be considered a criminal offence. The relevant provisions of the Penal Code and the Code of Criminal Procedure of Aruba were considered in accordance with the provisions of the Convention although they did not make explicit mention of torture. However, the Aruban Government had set up a special commission recently which was studying whether to establish torture as a criminal offence in a separate act or in a new article of the Penal Code. The recognition of universal jurisdiction in cases involving torture would also be considered. The Aruban Government was planning to enact legislation along more or less the same lines as the legislation of the Netherlands and would inform the Committee as soon as the new legislation had been adopted. Police Ordinances also formed an important part of Aruba's legal system and since 1986, when a national police force was established, new organs had been set up to settle matters relating to the police and the prison system. In the selection and training of both police and prison personnel increasing emphasis was being placed on proper behaviour, particularly in the treatment of prisoners. Special training programmes had also been introduced, and the new Prison Act that was under preparation would give prisoners the right to complain to a judge about their treatment by prison staff.

159. Members of the Committee thanked the representatives of the Netherlands Antilles and Aruba for the comprehensive and interesting oral introductions to the reports of their Governments.

160. With regard to the Netherlands Antilles, questions were raised in respect of the legal structure of the country. It was asked, in particular, whether there was a clear separation between the judicial, executive and legislative branches and how the Queen of the Netherlands, who was responsible for appointing judges, was assisted in her task. In that connection, details regarding the status of judges and, in particular, of the Attorney-General were requested. It was also asked whether the Queen played the role of a constitutional council or a supreme court in the country.

161. Referring to article 2 of the Convention, members of the Committee welcomed the establishment in the Netherlands Antilles of the commission assigned to undertake a general review of the Criminal Code and the Code of Criminal Procedure and wished to know more about its composition, its status and its programme of work. They wished to know also whether any violations of article 3 of the Constitution on the protection of nationals and foreigners had been recorded and how information on the prohibition of torture was disseminated. Concerning rules governing the interrogation of suspects, it was asked how long they could be held in pre-trial detention, by whom such detention could be ordered and what the rights of suspects were, in particular, with regard to informing their relatives of their detention and visits by a doctor and a lawyer. It was also inquired what the instructions to prison guards were in cases of riots and whether there was in the Netherlands Antilles a standing military force and, if so, what measures were taken to protect civilians from the military.

162. In respect of article 3 of the Convention, members of the Committee wished to know what the scope of the laws of the Netherlands Antilles on extradition was, especially with regard to non-refoulement, who the members of the commission that had been appointed to revise the Admission and Expulsion Act were, and whether foreigners subject to extradition procedures could lodge appeals and, if so, to whom.

163. Turning to article 4 of the Convention, members of the Committee stressed the importance of a precise definition of torture in domestic law and its classification as a specific crime and requested information on the exact nature of the offences covered by the articles of the Criminal Code of the Netherlands Antilles relating to torture. It was also asked whether the death penalty or corporal punishment applied in the country.

164. Members of the Committee also stressed the importance of the principle of universal jurisdiction, which was essential in order to guarantee the implementation of articles 5 and 7 of the Convention. In addition, they wished to know whether the Netherlands Antilles would take necessary measures to ensure the implementation of article 6, paragraph 1, of the Convention, what procedure was followed to institute proceedings in cases of criminal offences which fell within the jurisdiction of courts in the Netherlands Antilles and whether persons facing the death penalty could be extradited.

165. With regard to article 8 of the Convention, members of the Committee observed that the constitutional provision making the extradition of aliens possible only pursuant to a treaty was not in conformity with the provisions of that article.

166. Referring to article 9 of the Convention, members of the Committee wished to know how the Netherlands Antilles provided judicial assistance to other countries, in practice, and how requests for judicial assistance would be affected by the revision of the Code of Criminal Procedure.

167. With reference to articles 10 and 11 of the Convention, information was requested regarding the education of medical personnel specifically about the prohibition of torture and concerning legal provisions relating to the prison system and conditions of detention.

168. In connection with articles 12 and 13 of the Convention, details were requested on the cases, referred to in the report, involving police officers under investigation and the outcome of that investigation.

169. In respect of article 14 of the Convention, clarification was sought about the direct responsibility of the State for acts of torture perpetrated by a public official. It was also asked whether the provisions relating to redress applied to foreigners and how victims of acts of torture could obtain compensation.

170. With reference to article 15 of the Convention, members of the Committee wished to know whether there had been any cases in the Netherlands Antilles in which confessions or evidence had been obtained by coercion and what legal provisions there were in respect of the admissibility of evidence and confessions.

171. With regard to Aruba, members of the Committee asked for further details on the way judges were appointed and on their relationship with the executive. Referring to article 2 of the Convention, they wished to know whether corporal punishment was practised in Aruba and whether there was a standing military force and, if so, whether there were special regulations relating to its activities.

172. Referring to articles 13 and 14 of the Convention, members of the Committee wished to receive further information on measures taken in Aruba to allow prisoners to file complaints with judges and asked what provision had been made for the medical rehabilitation of victims of torture.

173. Replying to questions raised by members of the Committee, the representative from the Netherlands Antilles stated that the judicial, executive and legislative powers were independent. The only exception to that principle was provided for in article 50 of the Charter for the Kingdom, according to which the Queen could suspend or repeal any act or measure that was contrary to the law. The Attorney-General was independent in that his powers were defined by law and the Minister of Justice could not give him any instructions contrary to the law.

174. In connection with article 2 of the Convention, the representative informed the Committee that the revision of the Code of Criminal Procedure and the Criminal Code was being carried out by a joint commission composed of prosecutors and court officials from Aruba and the Netherlands Antilles and a university professor from the Netherlands. The Code of Criminal Procedure was being fully revised, whereas the Criminal Code was simply being amended to include provisions on torture. He also provided detailed information concerning procedures for arrest and custody and stated that interrogations had to be conducted in accordance with the provisions of the Code of Criminal Procedure. Complaints against police officers could be made to a specially established commission or filed with a member of the police or a court. There was no separate army in the Netherlands, the Netherlands Antilles and Aruba but, rather, one army for the entire Kingdom. The Code of Conduct for Military Personnel applied to the Kingdom as a whole.

175. Referring to article 4 of the Convention, the representative stated that although an article of the Criminal Code provided for the death penalty in case of treason, it would soon be repealed. There had been no executions in the Netherlands Antilles during the present century.

176. With reference to articles 5 to 8 of the Convention, the representative indicated that extradition measures in the Netherlands Antilles were ordered by the Supreme Court, which took account not only of national laws but also of international treaties. In the absence of an extradition treaty, article 8 of the Convention applied. If the person whose extradition was requested could face the death penalty, extradition was not granted.

177. In connection with articles 10 and 11 of the Convention, the representative explained that doctors were particularly aware of the question of the protection of human rights, that in penal institutions, minor and adult prisoners were kept in separate quarters and that convicted and accused persons were not held in the same prison.

178. With reference to article 15 of the Convention, the representative stated that there had not been any cases in the Netherlands Antilles of evidence obtained under torture. In the event of non-compliance with legal procedures, the evidence obtained was regarded as unlawful and those responsible for violating those procedures would be prosecuted.

179. In her reply, the representative of Aruba stressed that most Aruban institutions and laws were the same as those of the Netherlands Antilles, of which Aruba had been a part until 1 January 1986.

180. Referring to articles 13 and 14 of the Convention, the representative indicated that, pending the establishment of the Complaints Commission, complaints against members of the police were lodged with an independent judge in accordance with the Code of Civil Procedure. The question of complaints by detainees was dealt with in a bill now before Parliament. The corresponding act should enter into force in Aruba within one year. The representative added that, if necessary, a person who had been subjected to torture would be cared for by specialists from the Netherlands.

Concluding observations

181. In conclusion, members of the Committee thanked the representatives of the Netherlands Antilles and Aruba for their cooperation. They noted with satisfaction that both countries adequately implemented the Convention and hoped that existing legislative gaps would be filled by provisions that were in keeping with those of the Convention.

Finland

182. The Committee considered the initial report of Finland (CAT/C/9/Add.4) at its 65th and 66th meetings, held on 16 November 1990 (CAT/C/SR.65 and 66).

183. The report was introduced by the representative of the State party, who provided detailed information on social and economic conditions in his country. He noted, in particular, that there was a clear-cut separation between the executive, legislative and judicial powers in Finland and that the concept of torture was completely alien to Finnish society.

184. International human rights instruments to which Finland was a party, including the Convention, had been incorporated into the body of Finnish law and were directly applicable as domestic legislation. They had been expressly referred to in very few court cases thus far, but the present Finnish Government and the Parliamentary Ombudsman had been playing a pioneering role in disseminating information about them in order to make judicial authorities and public opinion aware of their provisions, their implementation mechanisms and their recourse procedures. Remedies were available to victims of human rights violations and civil or criminal proceedings could be instituted by private individuals as well as by Public Prosecutors. There were also administrative remedies in cases of complaints of official misconduct. Under Finnish law compensation was comprehensively provided, with primary responsibility for damages resulting from unlawful acts or omissions committed in the exercise of public functions resting with the authorities. Well-developed welfare institutions and public medical care were available to provide rehabilitation measures.

185. Referring to the incorporation into internal law of the self-executing provisions of international human rights instruments, including the provisions of the Convention, the representative noted that in case of conflict the interpretation indicated or required by the Convention would prevail but that before and during the process of the ratification of the Convention several areas of legislation, such as the Penal Code, rules of evidence, extradition law and immigration law, had been carefully scrutinized. In the case of the Penal Code, the crucial issue had been whether there was a need for a specific provision to match what was defined as torture in the Convention. Because the reform of the Penal Code was still under way, that issue was still open at the moment. Finland's Extradition Act also had some possible shortcomings but these were remedied by the fact that article 3 of the Convention was directly applicable and prevailed over the relevant provisions of the Aliens Act as lex posterior. With regard to the establishment of universal jurisdiction, the representative drew attention to the link between its practical application and the question of the adoption of a specific definition of torture in Finland.

186. Legislation under which a person condemned to life imprisonment could be sentenced to solitary confinement for a maximum duration of four years had recently been repealed. Minors under 18 years of age could now be sentenced to terms of imprisonment or other forms of custody only in very exceptional circumstances. The establishment of an independent investigatory body to deal with allegations of acts of torture was under consideration. The general rule relating to the free evaluation of evidence was regarded by the legal profession in the country as a sufficient guarantee against making use of statements elicited through torture.

187. Members of the Committee commended the Government of Finland for its extremely comprehensive and instructive report and thanked the representatives of the reporting State for their informative introduction. The amount and the quality of information provided showed the sincere desire of Finland to eradicate torture and its keen awareness of the areas in which protection was particularly necessary.

188. Members of the Committee wished to receive some clarification about the nature of the applicability of the Convention in Finland since some doubts subsisted as to whether the Convention carried the force of internal law and it appeared that a distinction was made among articles of the Convention that were directly applicable, others that were not directly applicable, and still others that gave rise to uncertainty. It was asked, in particular, whether the adoption of a special Act to implement the Convention had in any way changed the procedure for ascertaining that officials and authorities complied with the law and did not exceed their powers. In addition, information was requested on the role of the National Research Institute of Legal Policy, especially in relation to torture.

189. With reference to the debate raised in Finland about the need to adopt a definition of torture under criminal law, some members of the Committee recalled that torture was often used as a means of intimidating or even destroying a person and expressed the view that a specific and comprehensive definition of torture had to be included in the Penal Code, particularly to prohibit the increasingly common psychological forms of torture. They observed that to assimilate torture to other acts of violence disguised its exceptional nature and reduced the moral stringency of the legislation governing it. In most countries, the provisions of internal law were not sufficient to prohibit torture as defined by article 1 of the Convention and the adoption of a precise definition of torture in Finland could encourage other countries to do so. As an alternative, some members of the Committee expressed the view that Finland could supplement or amend existing provisions on acts of violence in such a way as to include all the acts of torture or ill-treatment covered by article 1 of the Convention.

190. In connection with article 2 of the Convention, further information was requested about the roles of the Parliamentary Ombudsman and the Chancellor of Justice, their respective areas of competence, and the bill to extend their powers which had been recently submitted to the Finnish Parliament. It was asked, in particular, whether it was correct to assume that the Chancellor of Justice could not take initiatives, what specific measures the Parliamentary Ombudsman could take against judges or whether his powers were merely investigatory, and what action the Finnish Government had taken in respect of complaints brought to its attention by the Ombudsman. In addition, several

questions were asked about prerequisites for arrest and pre-trial investigations and the rights of detainees. Further information was also requested regarding the conditions of indeterminate preventive detention and the possibility of appeal, the duration of police interrogation, pre-trial detention and the conditions governing police custody and solitary confinement, and whether there had been in Finland any specific cases in which the provision stating that an order by a superior could not be construed to justify torture had been invoked.

191. Referring to the Finnish Extradition Act, members of the Committee observed that its provisions were restrictive by comparison with those of article 3 of the Convention. They expressed the hope that some shortcomings of the Act, especially in respect of the principle of non-refoulement where the threat of torture was concerned, would be remedied by the enactment of additional human rights legislation.

192. Members of the Committee referred to a provision of the Finnish Penal Code whereby certain acts constituted crimes only once they had been accomplished and observerd that such a provision did not seem to be in conformity with article 4 of the Convention. They also asked what penalty applied when a victim of aggravated assault and battery had died.

193. With regard to article 9 of the Convention, members of the Committee were of the view that Finnish legislation on mutual assistance was restrictive because it appeared to require a specific treaty on the subject and asked whether the Convention would qualify as the basis for such assistance.

194. In relation to article 10 of the Convention, information was requested specifically about the inclusion of education regarding the prohibition of torture in the training of medical personnel and prison staff.

195. In connection with articles 12 and 13 of the Convention, it was asked whether the allegations against the police referred to in the report concerned mild ill-treatment or grave misconduct, what the outcome of the investigations had been and what sentences, if any, had been handed down. It was asked also what action had been taken on the proposal to establish an independent investigatory body, whether the victim's right to initiate legal proceedings even in the event that the Public Prosecutor decided not to press charges had been exercised in practice and which legislative provision guaranteed it.

196. As for article 14 of the Convention, it was inquired whether there were in Finland any specific provisions on medical rehabilitation as distinct from merely financial rehabilitation, and how victims were compensated for mental injury.

197. With reference to article 15 of the Convention, and noting that minors in Finland could never be interrogated without the presence of a witness, members of the Committee asked how the witness in question was chosen. They also pointed out that, if article 15 was not directly applicable, legislation should be enacted to guarantee that evidence obtained as a result of torture could not be invoked in legal proceedings.

198. In his reply, the representative of Finland clarified that in his country only certain provisions of the Convention could be invoked directly, and it was for the judicial authorities to decide on their scope in each case. However, the fact that the Convention might either be invoked directly or for interpretative purposes in connection with the application of the relevant provisions of national legislation made little difference in its effects.

199. With reference to article 1 of the Convention, the representative indicated that the question concerning the inclusion of a precise definition of torture in the new Penal Code currently under preparation would be considered by Parliament in due course.

200. Referring to issues raised in connection with article 2 of the Convention, the representative explained that the powers of the Chancellor of Justice and the Parliamentary Ombudsman overlapped to a considerable extent in order to give aggrieved citizens a choice as to the authority to which they would submit their complaints. The Bill referred to in the report was primarily a technical measure designed to ensure a better distribution of resources and to avoid duplication, bearing in mind the formidable number of complaints lodged. Neither the Parliamentary Ombudsman nor the Chancellor of Justice had the capacity to impose their views, but both were respected authorities who played a guiding and advisory role in the Finnish legal system.

201. Police custody in Finland could not exceed four days. A person so remanded was entitled to the assistance of counsel during questioning unless the authorities responsible for the investigation found him untrustworthy or considered that the case called for a special procedure. The Pre-Trial Investigation Act regulated the right of a person in police custody to communicate with his family or to be examined by a doctor. Persons in pre-trial detention constituted 10 per cent of the prison population which amounted to 4,000 persons out of a total Finnish population of 4.9 million. Persons in preventive detention could appeal to a special court which could grant them parole.

202. Referring to articles 4 and 5 of the Convention, the representative provided information on penalties laid down in the Penal Code for various offences noting, in particular, that while assault that was actually perpetrated was a punishable offence, attempted assault was not. There was no provision of the Penal Code specifically establishing universal jurisdiction.

203. With regard to article 10 of the Convention, the representative stated that Finland was applying provisions prohibiting doctors from any form of complicity in torture. Prison officials were given special training courses at a special training centre run by specialists in international human rights law.

204. With reference to articles 12 and 13 of the Convention, the representative indicated that the great majority of complaints lodged against members of the police concerned abuse of authority, although sometimes the alleged offences involved inhuman treatment under the Convention. Culprits were severely censured and were given a warning or reprimand by the Parliamentary Ombudsman or the Chancellor of Justice.

205. As for article 14 of the Convention, the representative stated that Finnish legislation provided for compensation to be granted to torture victims, both for material damage caused and for pain inflicted. The current trend was towards a broad interpretation of the offence of torture for compensation purposes.

206. Referring to article 15 of the Convention, the representative stated that the witness who attended the interrogation at the request of the investigator or the person questioned was usually chosen from among members of the police forces. The presence of a witness during the interrogation was linked to the nature of the preliminary investigation. Any statement made out of court was in principle regarded as inadmissible unless confirmed in court. Any statement found to have been extracted under duress was dismissed as evidence. A decision to incorporate in the Code of Judicial Procedure an explicit provision making any deposition obtained through torture inadmissible would be a purely symbolic gesture since such depositions were never taken into account under the existing system based on the free assessment of evidence.

Concluding observations

207. In conclusion, members of the Committee expressed the view that both the report and the dialogue established with the representatives of Finland had been extremely interesting and could serve as a model for other reporting States. They added that in the next periodic report of Finland, clarifications would be desirable concerning the application of article 1 of the Convention, particularly the definition of torture under internal law; the application of articles 3 to 8, particularly the question of universal jurisdiction; the application of article 9, particularly the question of mutual judicial assistance between States parties and the application of article 15. Finally, they expressed the wish to receive the revised Penal Code of Finland as soon as it was adopted.

208. The representative of Finland assured the members of the Committee that due account would be taken of their comments in the preparation of his Government's next periodic report.

Panama

209. The initial report of Panama (CAT/C/5/Add.24) was considered by the Committee at its 75th and 76th meetings on 23 April 1991 (CAT/C/SR.75 and 76).

210. The report was introduced by the representative of the State party, who said that Panama, as a State party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, had taken the legislative, administrative and judicial measures required to prevent acts of torture from being committed in its territory and that his statement was aimed at supplementing his country's written report and giving the members of the Committee a clearer and more comprehensive idea of how Panama was implementing the Convention.

211. The representative explained that the revision of the Penal Code, which was currently under way, was based on two major principles: "non-imprisonment", to offset the negative effects of custodial penalties, and

decriminalization. The principle of "non-imprisonment" took three forms, the first of which was postponement of the enforcement of the sentence, the second a suspended sentence and the third conditional release; detailed descriptions of each were given. The Panamanian authorities were also concerned to avoid pre-trial detention, and it was with that purpose in mind that, in early 1991, Act No. 3 had been adopted providing, in particular, for the use of measures other than pre-trial detention for persons under a sentence of less than two years in prison who had no criminal record and had not attempted to elude Panamanian justice, as well as for persons over 65 years of age and pregnant women.

212. With regard to the prison system, he informed the Committee that Panama had a programme for implementing the Standard Minimum Rules for the Treatment of Prisoners and that funds were earmarked, in particular, for the construction of new prisons with the physical structure needed to ensure humane and rational treatment for prisoners. The prison system, which was governed by article 28 of the Constitution, was based on the principles of security, rehabilitation and social protection. All acts injurious to prisoners' physical or mental integrity were prohibited and prisoners were provided with training to help them re-enter society. However, the education of prisoners and work as a means of rehabilitation were still not very common in Panamanian prisons. Noting that the prison system was governed by several different laws not yet included in a single code on the enforcement of sentences and having described those laws as well as other aspects of the operation of the prison system, he said that significant improvements had been made in 1990. He cited some examples and gave a summary of the major activities planned for 1991 in that field. In conclusion, he said that the philosophy underlying Panama's prison policy was based on the principle of humanizing prisons; respect for human rights should become the customary practice in all prisons in the country.

213. The members of the Committee, noting that Panama's report was too brief, thanked the Panamanian representative for a statement particularly rich in information. They requested further information of a general nature, in particular on the ranking of legal instruments in Panama; the possibility that the Convention might be contradicted by a law enacted subsequent to the Convention's entry into force; the procedure adopted to give effect to the Convention's provisions; and the organization and powers of the police force in Panama.

214. Referring to articles 1 and 2 of the Convention, members of the Committee asked whether Panamanian internal law contained a definition of torture and whether a definition of an act of torture within the meaning of the Convention had been introduced into its internal legislation. Clarifications were also requested concerning the date when the obligations laid down in the Convention had been incorporated into internal law.

215. Concerning the implementation of article 3 of the Convention, some members of the Committee asked for clarification of the meaning of article 24 of the Constitution of Panama and wished to know whether torture was treated on the same basis as "political offences" which could not be invoked as grounds for extradition. Some members of the Committee noted that the report contained no information on the question of expulsion or refoulement and requested further information in that regard.

216. In relation to the implementation of article 4 of the Convention, some members of the Committee asked whether "an attempt to commit torture", as referred to in that article, was also an offence under Panamanian criminal law and whether penalties applied in cases of attacks on physical integrity were also applied in cases of attacks on pyschological integrity. They also wished to know what penalties were laid down for failure to observe disciplinary rules in prisons and, in particular, whether they included corporal punishment and deprivation of food; and which criminal penalties were laid down for the offence of torture and whether Panama took into account its grave nature, in accordance with article 4, paragraph 2, of the Convention.

217. In connection with article 7 of the Convention, members of the Committee pointed out that, although article 10 of the Penal Code might be sufficient to meet the requirements of article 5 of the Convention, the same could not be said for the provisions of article 7 of the Convention to the extent that there appeared to be restrictions on the right to try a person whose extradition was refused on one of the grounds laid down in article 2508, paragraphs 5 to 11, of the Judicial Code. They also asked whether a person could be held incommunicado and, if so, for how long; whether that decision was taken by the examining magistrate or by the police; whether the detainee had the right to be assisted by counsel at the time of arrest or only at a subsequent stage of the proceedings; whether the detainee was obligated to make a statement before being allowed to meet with his counsel; whether a detainee had the right to choose his lawyer or whether the lawyer was appointed by the court; whether there was a body of experts in forensic medicine in Panama and what their powers were, especially with regard to drawing up reports. They also requested further information on the powers of the police and on the time-limits for bringing a person arrested by the police before the judicial authorities. Some members of the Committee also asked whether the treatment of political prisoners was the same as or different from that of other prisoners and what the conditions of detention were for drug traffickers under the new prison system.

218. Regarding the implementation of article 8 of the Convention, it was asked whether extradition were possible to a State with which Panama had not concluded an extradition agreement.

219. With regard to the effect given to article 10 of the Convention, members of the Committee took note with satisfaction of the various measures referred to in the report and of the plans discussed by the members of the Panamanian delegation and requested more details on the training of medical personnel, in view of the fact that doctors sometimes took part in the practice of torture, and on the training of judicial and military personnel.

220. Concerning article 11 of the Convention, members of the Committee requested clarifications on how inspection visits were conducted and, in particular, on whether detainees were systematically given a medical examination at that time. They also asked whether detainees had other means of submitting complaints to the authorities.

221. As to the implementation of article 13 of the Convention, some members of the Committee, noting that the report contained no information on that subject, requested explanations in that regard, as well as on the general

amnesty provisions in Panama and the effects an amnesty might have on the possibility of filing a complaint or bringing a civil suit.

222. Concerning article 14 of the Convention, members of the Committee asked which measures had been taken in Panama with a view to the social reintegration of detainees and for the medical rehabilitation of victims of torture and ill-treatment. In that connection, it was asked whether the Panamanian delegation could indicate how many officials had been implicated in cases of ill-treatment since the Convention had been ratified. Noting that the Civil Code did not refer to the right of the victim of an act of torture to obtain compensation, members of the Committee requested more detailed information on that point. They asked in particular for data on indemnification and the amount and nature of possible compensation.

223. Noting that Panamanian legislation did not contain provisions for implementing article 15 of the Convention, members of the Committee asked which internal measures the State took to prevent a statement obtained under torture from being invoked as evidence, in accordance with the Convention, and what effect proceedings would have in a case where evidence had been obtained under torture.

224. With regard to article 16 of the Convention, members of the Committee wished to know which criteria were used to differentiate between the offence of torture and disciplinary or administrative violations.

225. In reply to the questions raised by members of the Committee, the representative of Panama stated that it was of course possible that the act which had ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment could be superseded by another act. However, in accordance with the provisions of article 31 of the Convention, denunciation would not become effective until one year after the necessary written notification had been received by the United Nations Secretary-General. The new democratic Government was concerned about the widespread abuses that had prevailed within the prison system during the 20-year period of dictatorship from 1968. It had undertaken to restructure the national police force. Cabinet Council Decree No. 38 of 10 February 1990 had abolished the former Defence Force, establishing a national police force directly responsible to the executive organs whose actions were subject to the Constitution and the laws of the Republic and whose tasks included ensuring respect for human rights and support for democratic institutions. As a result of the action taken by the Government with respect to the reorganization of the police force, the latter was gradually winning confidence and beginning to perform its role efficiently.

226. With regard to article 1 of the Convention, the representative said that it was up to the judge to determine, on the basis of expert advice, what in any given case constituted physical or mental pain or suffering amounting to torture.

227. Turning to article 2 of the Convention, the representative stated that the legislation governing the national prison system dated back to 1941 and had not been substantially amended since. However, as part of efforts to update the 1941 legislation, measures were being taken to ensure that the United Nations Standard Minimum Rules for the Treatment of Prisoners were

applied to all prisoners. Many shortcomings still had to be overcome, particularly with regard to overcrowding. In 1990, amnesties and pardons for those convicted of political crimes and reduction in sentences for 350 ordinary offenders had alleviated the problem of overcrowding. At the start of 1990, less than 10 per cent of the prison population had been convicted of offences and almost 91 per cent had been prisoners on trial or awaiting trial. According to the most recent statistics, the number of remand prisoners and prisoners on trial had fallen to 81 per cent and it was hoped that it would drop further to 60 or 50 per cent within one year as a result of the application of Act No. 3 of 1990. Technical teams composed of social workers, psychologists and criminologists were needed. Prisoners had to be properly classified within the prisons. The representative further indicated that the Government of Panama had taken a number of practical steps to ensure the dignity of individuals detained in prison. It had allocated the equivalent of some $5.4 million for the construction of a new detention centre, was mindful of the problems existing in the prison system and was making every effort to ensure that detainees were not mistreated.

228. With respect to article 4 of the Convention, the representative pointed out that, since 1983, the Panamanian Penal Code had contained provisions on offences against the integrity of the person, with particular reference to violations involving unnecessary suffering inflicted by public officials. In all cases, the decision as to guilt was made by the officiating judge on the basis of expert advice. If the person concerned was found to have been responsible for cruel, inhuman or degrading treatment, an application on his behalf for bail could be denied. Public officials found guilty of such offences faced sentences of 10 to 15 years' imprisonment. There was no capital punishment in Panama.

229. In connection with article 7 of the Convention, the representative gave a detailed description of the three phases of criminal proceedings in Panama and pointed out that the persons accused of an offence were entitled to be brought before the competent authorities within a period of 24 hours and, when formally charged, had to be informed of their rights. They were entitled to the services of a defence counsel, paid for and appointed by the State if they were without means. Accused persons could, however, defend themselves in person if they so wished. Pre-trial detention was the responsibility of the Public Prosecutor's Office and should not normally exceed two months' duration. However, if the offence was of a serious nature or if repeated offences were involved it could be extended to four months, subject to the remedy of habeas corpus. As a safeguard against arbitrary detention by the State, the Penal Code made provision for compensation on the grounds of material or moral injury and for setting aside cases after a period of one year's detention. Criminal legislation in Panama prohibited solitary confinement or incommunicado detention, and affirmed the principle of the presumption of innocence. Defendants who alleged ill-treatment when in custody could request a medical examination by a doctor of their own choosing and could submit evidence of such ill-treatment in the court proceedings. There were no political prisoners in Panama. A number of former political figures had been charged but the offences in question were common crimes committed while they had held political office, not political crimes. The representative indicated that no specific programmes were envisaged for drug traffickers. The Government's policy was to try to ensure that they were

detained under conditions of maximum security, but without prejudice to their human rights.

230. With reference to article 8 of the Convention, the representative stated that extradition was governed by the provisions of Act No. 5 of 16 June 1970. Articles 2508 (XII) and 2510 (IV) of the Code of Criminal Procedure specified that extradition might be refused where the request was contrary to the provisions of the law or of any treaty to which Panama was a party. If a country having no relations with Panama wished to extradite one of its citizens, under article 2502 of the Code of Criminal Procedure, it could submit the request via a friendly country, as provided for in the Convention. In such cases, the person concerned had the right to appeal within 30 days to the Supreme Court of Justice which would then study the objections and, where they were deemed to be well founded, refuse the request for extradition.

231. In connection with article 10 of the Convention, the representative of the reporting State informed the Committee that the new democratic Government, although in office for only a short time, had organized 96 three-month training courses in 1990 for almost half the national police force. The priorities of those courses had been human rights, police procedures, community relations, police ethics and first aid. He said that his Government was fully aware of the importance of training for members of the staff of detention centres and in 1990 had sent warders, inspectors and supervisors to the prison training school at the Reform Centre in San José, Costa Rica.

232. With regard to article 11 of the Convention, the representative said that one day was set aside each month for visits to prisons by circuit judges, examining magistrates and municipal judges. Judges were requested to visit detention centres and report on the progress of each prisoner's case. Where the judge found evidence that a prisoner had been ill-treated, the case would be referred to the Institute for Forensic Medicine and the prison director would be required to submit a report.

233. With respect to article 13 of the Convention, the representative, referring to the situation existing in Panama before 1989, stressed that it was clear that military dictatorship did not respect human rights. Persons who had made allegations of torture had disappeared and judges who had heard the complaints had been transferred elsewhere. Where an amnesty or pardon was granted, generally to political prisoners, detainees were not exempt from civil liability. There was no question of an amnesty or pardon for those guilty of human rights violations.

234. Turning to article 14 of the Convention, the representative pointed out that under the Penal Code a judge could determine civil liability in the course of criminal proceedings in order to compensate a person subjected to torture or to make restitution to his family. Such a remedy did not, however, rule out the possibility of an application for compensation under civil law.

235. As for the application of article 15 of the Convention, the representative noted that confessions obtained by torture could not be invoked as evidence in any proceedings and that evidence obtained by means of torture must be disregarded in hearings during criminal proceedings.

Concluding observations

236. In concluding their consideration of the report, the members of the Committee, having noted that democracy had only recently come to Panama and that promised reforms, while well under way, had not yet been completed, thanked the Panamanian delegation for the amount of information contained in its oral presentation of the report and for its comprehensive answers to the Committee's questions. They observed, however, that the report was rather brief and that it was difficult for the Committee to assimilate information given orally. Moreover, some questions had still not been answered. Accordingly, they requested that the Government of Panama, when submitting its periodic report in September 1992, should take into account the Committee's remarks and the questions which still remained to be answered. It should also endeavour, in its periodic report, to give a full description of the measures taken - both in its legislation and in practice - to implement each article of the Convention.

Chile

237. The Committee considered the additional report of Chile (CAT/C/7/Add.9) at its 77th and 78th meetings, on 24 April 1991 (CAT/C/SR.77 and 78).

238. The report was introduced by the representative of the State party, who explained that the current report had been submitted in order to complete and rectify the report that had been submitted by the former Government (CAT/C/7/Add.2) and which had provided a distorted picture of the then-prevailing situation with regard to torture. Between 1973 and 1990 torture had become an institutionalized practice, applied systematically to put pressure on the political opposition. Since the installation of the constitutional Government in 1990 a number of measures had been taken, notably with regard to the protection of detainees, which have led to a considerable decrease in the number of cases of torture. He said that at present torture in Chile could be considered as residual, not as institutional.

239. The representative further noted that his Government had withdrawn all of the reservations to the Convention made by the former military Government and that a number of legislative and other measures had been taken since the submission of his Government's additional report. These included measures aimed at the abolition of the death penalty, which had been retained for five serious crimes. Furthermore, two laws had been adopted providing for guarantees for persons held in detention. Under these laws, a significant number of offences that had been dealt with by the military tribunals were brought under the jurisdiction of the civil courts. The representative said solitary confinement could only be applied as a disciplinary measure in penitentiaries. Persons in pre-trial detention had access to a lawyer and in case the detention was prolonged, were to be examined by a physician. With regard to confessions made in cases before the military tribunals under the former regime, judges were obliged to hear a new declaration by the accused and to make sure that statements had not been obtained through torture or other forms of ill-treatment. In addition, the Government had taken measures to investigate complaints and punish acts of torture. The representative drew attention to a programme of police training in the field of police ethics and human rights. Finally, he mentioned the termination of the mission of the

International Committee of the Red Cross in his country, which indicated that this body no longer viewed the situation in Chile with the same degree of concern.

240. The members of the Committee welcomed the report and the additional information provided by the representative of Chile in his introduction, in particular with regard to the withdrawal by the Government of the reservations to the Convention. The report provided an unusual and detailed analysis of the systematic use of torture under the former regime and gave evidence of radical changes in the Chilean legal framework. However, in the view of members of the Committee it was necessary to provide more detailed information with regard to the implementation of individual articles of the Convention as well as on the actual structure of the organization of the police, the carabineros and the military, including their relation to the civil Government, and to indicate whether any reforms were envisaged in this respect. Members of the Committee inquired whether the Convention had been incorporated into domestic law. They also wished to know whether an official State body had been charged with the coordination of the struggle against torture and whether measures had been taken to encourage the population to denounce acts of torture. In particular, it was asked whether the Chilean population had been made aware of the existence of the Committee against Torture and whether the population had been informed of the inaccuracy of the report submitted by the former Government.

241. In connection with article 1 of the Convention, members of the Committee wished to know whether the definition of torture given in that article had been incorporated into Chilean law.

242. With reference to article 2 of the Convention, members of the Committee sought information on measures taken to prevent and punish acts of torture, especially with regard to the participation of doctors and acts of violence committed by carabineros. They wished to know what provisions applied to detention in a state of emergency and whether any new provisions had been adopted to give effect to paragraph 3 of this article relating to orders from a superior. It was also asked whether the remedy of habeas corpus was available under the current constitutional system.

243. With regard to article 3 of the Convention, members of the Committee asked what the position was of the Chilean Government with regard to the issues of expulsion and non-refoulement.

244. Referring to article 4 of the Convention, members of the Committee asked whether torture as such was considered as a punishable offence. In particular, they wished to know whether ill-treatment would be regarded as torture resulting in injury if psychological sequelae could be proven without any trace of physical torture. They also wished to know whether any measures of amnesty were envisaged and, if so, whether they would apply to both civil and penal claims. Information was requested on whether officials responsible for torture at the highest level of authority in the dictatorial regime, including judges of the Supreme Court, were being prosecuted. It was also asked what measures had been taken to prosecute those having taken part in acts of torture, especially with regard to doctors and carabineros.

245. In view of articles 5, 7 and 8 of the Convention, members of the Committee wished to know whether Chilean courts were competent to hear cases of torture committed by foreigners abroad who were arrested on Chilean soil. It was also asked what the position was of the Chilean Government with regard to mutual judicial assistance.

246. With regard to article 10 of the Convention, members of the Committee sought information concerning the training of the military, medical personnel, and officials in the judiciary and in penitentiaries.

247. With reference to article 11 of the Convention, members of the Committee wished to know for what reasons persons could be held in incommunicado detention for a period up to 10 days and whether further measures had been taken since the submission of Chile's initial report in 1989 to ensure implementation of this article.

248. With reference to article 14 of the Convention, members of the Committee wished to know whether victims of torture had been compensated and, if so, under what conditions.

249. Turning to article 15 of the Convention, members of the Committee wished to receive information with regard to the admissibility as evidence in legal proceedings of statements which had been obtained through torture or other forms of coercion.

250. In his reply, the representative of Chile pointed out that the situation with regard to the implementation of the Convention was much the same as described in the initial report submitted in 1989 by the previous Government (CAT/C/7/Add.2), although the political conditions were now very different. He explained that laws which had been passed before the military coup of September 1973 had been ignored or distorted, but not repealed by the military dictatorship. Laws passed during the period of military dictatorship were still in force and were now being changed by decisions of Parliament. The additional report now under consideration focused on legislation adopted since the accession of the new Government in March 1990. With regard to the status of the Convention under Chilean law, the representative stated that the Convention had the full force of domestic law; in case of a conflict between domestic law and the Convention, it was the Convention which prevailed.

251. Replying to questions concerning the organization of the judiciary and of the investigative authorities, the representative said that a bill was being prepared for submission to Congress with the aim of ensuring a truly independent judiciary. The jurisdiction and composition of the military courts were also under review. It was noted, however, that progress in this field was hindered by the fact that the majority of members of the Constitutional Court were still identified with the previous regime. The representative informed the members of the Committee of the creation of the office of ombudsman, which would have prime responsibility for the processing of torture cases. With regard to the organization of the police, the representative said that a decision had been taken to revert to the traditional system, under which the carabineros and the criminal investigation department now under the responsibility of the Ministry of Defence would come under the responsibility of the Ministry of the Interior.

252. In connection with article 1 of the Convention, the representative said that the concept of torture was defined in the Criminal Code, which dated from 1875.

253. Turning to the implementation of article 2 of the Convention, the representative explained that the state of exception had been lifted. With regard to superior orders invoked as a justification of torture, the representative stated that according to the Chilean Military Code of Justice a subordinate was not held responsible for an act of torture if he had queried the order and a superior officer had confirmed the order. As a result of the withdrawal of the reservation concerning article 2 (3) of the Convention, a subordinate was henceforth responsible for acts of torture carried out under orders from a superior. It was noted, however, that this provision was not retroactive. The representative further noted that the rule of habeas corpus was long established in Chilean law but that it had been suspended during the period of rule by the military junta.

254. Referring to the withdrawal of the reservation concerning article 3 of the Convention, the representative said that no special legislation was necessary to establish the principle of non-refoulement in Chilean law, since the Convention itself had the full force of domestic law.

255. With regard to article 4 of the Convention, the representative stated that all acts of torture were considered as offences under criminal law by virtue of the incorporation of the Convention in domestic law. It was accepted that injuries resulting from torture could be both physical and mental in character. The punishment for torture under the Criminal Code of 1875 was a prison sentence of up to five years, depending on whether or not it resulted in injury or death. He explained that a physician who connived at acts of torture bore a criminal responsibility for that connivance. In addition, professionals such as physicians and lawyers were also answerable to their professional associations. However, there had been little success in the campaign to prosecute physicians who had connived at acts of torture. With regard to the matter of amnesty, the representative drew attention to Decree Law No. 1978 promulgated by the junta with the aim of procuring an amnesty for its own human rights offenders. In this connection, he explained that the political situation in Chile was such that there was insufficient political will to bring about the repeal of that Decree Law.

256. In connection with articles 6, 7 and 8 of the Convention, the representative said that the Chilean authorities would not detain or extradite an alleged torturer unless they had received a request from the State where the torture was alleged to have taken place. If Chile refused the extradition request for any reason it would try the alleged offender in its own courts. Acts of torture were considered extraditable offences for the purposes of extradition treaties with other States.

257. In his reply concerning article 10 of the Convention, the representative stated that he did not have detailed information regarding the training given to the armed forces and the carabineros. However, there were plans to improve the training of members of the Police Department. Medical schools provided training in medical ethics, including the subject of torture. Furthermore, physicians taking part in the questioning of suspects were now attached to the Police Department and shared in the human rights training of that service.

258. In connection with article 11 of the report, the representative elaborated on measures taken to limit the use of solitary confinement. Solitary confinement was permissible only as an additional punishment for a recidivist and as a procedural measure to prevent the detainee from contacting criminal accomplices. Solitary confinement was limited to 15 days but could be extended. Detainees had the right to a daily visit from their lawyer and to regular examinations by a physician. No further legislation had been passed on the matter. A group of experts with extensive knowledge of the work of the United Nations in that field was currently engaged in the preparation of a new prison code.

259. In respect of articles 12 and 13 of the Convention, the representative said that the courts were currently investigating over 35 complaints of torture under the military dictatorship but that no verdict had been reached in any of them.

260. Turning to the question of compensation for the victims of torture covered by article 14 of the Convention, the representative drew the attention of members of the Committee to provisions of a permanent nature according to which torturers were considered to bear a civil responsibility for their actions if they had been convicted of torture in a criminal court. In some cases, the State was deemed to bear civil responsibility for the criminal acts of its agents. A bill was currently before Congress with the aim of providing compensation for the victims of torture, disappearance or summary execution, or for their relatives.

261. With reference to article 15 of the Convention, the representative stated that confessions elicited under torture were not considered valid, although the onus was on the accused to prove that torture had been applied. In general, a confession would have value as evidence if other evidence confirmed participation in the offence. In retrials in civil courts of cases heard originally in military courts the judge was specifically required to evaluate the confession of participation in an offence and a subsequent retraction in order to determine whether the confession had been obtained under duress.

Concluding observations

262. In concluding the consideration of the report, members of the Committee commended the Government of Chile for its efforts to comply with the Convention and wished it success in overcoming the obstacles that it confronted in restoring full democracy in the country. Members of the Committee noted, in this connection, that not all State organs had made equal progress. With regard to legislative measures, it was suggested that a separate crime of torture providing for appropriate penalties should be established in the Chilean Penal Code. Furthermore, it was stressed that the concepts of civil and criminal liability were very different; in the absence of a criminal conviction, the State might still be held liable to compensate a victim of torture for the acts committed. Members of the Committee also said that in accordance with article 6 of the Convention, a person accused of an act of torture abroad should be detained in order to give other States time to submit a request for extradition. In conclusion, members of the Committee expressed the hope that the second periodic report to be submitted by the Government of Chile would reflect the practical progress achieved in the area of legal and organizational reform.

Algeria

263. The Committee considered the initial report of Algeria (CAT/C/9/Add.5) at its 79th and 80th meetings, held on 25 April 1991 (CAT/C/SR.79 and 80).

264. The report was introduced by the representative of the State party, who referred to the ongoing process of legal reform in his country. In this context, he drew the attention of members of the Committee to the adoption of a law in March 1990 clearing the path for the establishment of a multi-party system in Algeria.

265. The members of the Committee commended the Government of Algeria for the quality of its report and expressed their appreciation for the democratic nature of the process of legal reform. With regard to the form of the report, it was noted that the first part contained perhaps too much information of a general nature, which was of little direct relevance to the implementation of the Convention. Members of the Committee wished to receive additional information on the revisions made in the organization of the judiciary, with emphasis on training, conditions for nomination and dismissal, disciplinary provisions and the political rights of judges. They also wished to know how the provisions for the protection of judges against all forms of pressure were put into practice; whether the judge's obligation to conciliate between parties in a litigation pertaining to administrative law might not lead to an arbitrary result in the case of an individual opposing public authorities; and whether reparation could be obtained for judicial errors. Information was sought also on the establishment, membership and powers of the National Committee against Torture and the Constitutional Council.

266. Noting that international treaties were accorded precedence over domestic law, members of the Committee asked whether any specific laws had been adopted implementing the Convention. They also wished to be provided with information of a general nature on the laws and measures governing prison administration and on the role of the armed forces in the maintenance of order. Additional information was requested with regard to the competence of tribunals during the state of exception and the validity of their earlier rulings and on the application of the death penalty in Algeria. Members of the Committee also asked what the scope was of the amnesty mentioned in paragraph 7 (1) of the report and whether the victims of the crimes involved had been compensated.

267. With regard to article 1 of the Convention, members of the Committee asked whether the definition of torture in article 1 of the Convention applied in Algeria by virtue of the integration of the Convention in domestic legislation.

268. With regard to article 2 of the Convention, members of the Committee wished to know what measures had been taken to prevent torture, especially with regard to rules of interrogation of detainees and possibilities for complaint in cases of ill-treatment. They also wished to know whether any amendments were envisaged with regard to legislation on the state of emergency; under what circumstances a state of emergency could be proclaimed and whether a state of emergency would suspend the rights of a detainee to communicate wiht a lawyer and to have access to medical care; and whether the ban on torture could be lifted in such circumstances. Finally, it was asked

whether positive Algerian law provided that an order from a superior officer or a public authority might not be invoked as a justification of torture.

269. Noting that the report referred to articles of the Convention relating to the Status of Refugees, members of the Committee remarked that article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was of a broader nature and queried whether Algerian legislation on refoulement and extradition was in conformity with the latter Convention. It was asked in particular whether aliens benefited from additional guarantees with regard to expulsion. With reference to information from Amnesty International concerning Moroccan soldiers who had fled to Algeria and were subsequently returned to their country, it was asked whether their expressed fears of being tortured upon return in their country had been taken into account by the Algerian authorities.

270. With reference to article 4 of the Convention, members of the Committee asked how the crime of torture as defined in the Convention was punished and whether non-physical violence was also covered by the law. They wished to receive information on the number of cases of torture and to be provided with some examples of jurisprudence in such cases. Furthermore, they asked whether those guilty of inflicting death by negligence were subject to capital punishment.

271. With regard to article 5 of the Convention, members of the Committee asked what the position would be of a person known to have committed torture on an Algerian citizen outside Algerian territory.

272. Turning to articles 6, 7 and 8 of the Convention, members of the Committee asked to be provided with information on rules governing the procedure in cases of apprehension in flagrante. They wished to know whether extradition procedures provided for custody as envisaged in article 6 of the Convention; how article 7 of the Convention was implemented in Algerian legislation; whether extradition was subject to the existence of a treaty; and whether political considerations were taken into account in extraditing persons accused of torture.

273. With regard to article 10 of the Convention, members of the Committee sought information with regard to the training of legal, medical and prison staff.

274. With reference to article 11 of the Convention, members of the Committee asked what were the maximum periods of preventive, pre-trial and secret detention and which authorities ruled on their prolongation; whether detainees had access to their lawyer at all times; how prison establishments were supervised by the judicial authorities; and whether prison guards were armed and what their instructions were in cases of mutiny or mass escape.

275. With regard to article 12 of the Convention, members of the Committee asked whether there had been any investigations into cases of torture. It was also asked what had been the number and nature of brutalities that had occurred in the affair at the Blida prison. Members of the Committee wished to be informed of the judicial aftermath of this affair and inquired whether similar problems had also occurred elsewhere.

276. With reference to article 14 of the Convention, members of the Committee asked whether a victim of torture inflicted upon him by an agent of the State could obtain compensation by invoking the criminal responsibility of the agent before a criminal tribunal or by invoking the responsibility of the State before an administrative tribunal and whether the same procedures would apply to aliens. Members of the Committee also inquired whether there had been any requests for compensation by torture victims and, if so, in what form the compensation had been awarded, what forms of rehabilitation were applied, and whether there were any rehabilitation centres in Algeria.

277. In connection with article 15 of the Convention, members of the Committee wished to know whether there had been any cases in which statements obtained through the application of coercion had been rejected by tribunals and whether such rejection was automatically applied, as provided by the Convention, even in the absence of precise provisions to that effect in Algerian legislation.

278. In reply to comments made by the members of the Committee, the representative of Algeria said that the exhaustive nature of the first part of the report could be explained by the fact that his Government's competent authorities had endeavoured to highlight the politico-legal context in which Algeria had been evolving since its independence.

279. With regard to questions raised concerning the Constitutional Council, he explained that the Council was composed of seven members under the presidency of a former Minister of Justice and was responsible for guaranteeing compliance with the Constitution. Turning to the organization of the judiciary, he said that a number of measures had been taken to strengthen its independence. Judges were required to obey only the law and anyone who attempted to influence or threaten them was punishable under civil law. The new statutes of the Supreme Council of Justice excluded representatives from the Ministry of Justice from participating in disciplinary sessions so that magistrates would be judged by their peers only. The provision prohibiting judges from joining political associations was also aimed at strengthening the independence of the judiciary. However, judges were permitted to join trade unions. Lawyers were no longer considered as officers of the court but as agents contributing to the protection of individual freedoms. The procedure for appeal against acts by the authorities had also been improved by increasing the number of chambers and magistrates. There were 31 courts of appeal and a Supreme Court as well as military courts. The latter were competent only to deal with offences committed by military personnel in military areas.

280. With reference to the organization of the investigative authorities, the representative explained that, while the police was under the Ministry of the Interior and the gendarmerie under the Ministry of Defence, both the police and the gendarmerie as judicial police officers were subject to the supervision of the Chief Prosecutor, who monitored the activities of the judicial police and, if necessary, challenged any official who acted in excess of his powers. The Amnesty Law passed in August 1990 covered all offences committed during the state of emergency between 1980 and 1988 and all people who had committed offences against the security of the State between 1980 and February 1989. With regard to the issue of capital punishment, the representative stated that since the 1960s the Supreme Court or the Court of Cassation had overturned all death sentences passed by the criminal courts for

economic crimes. No execution on any other grounds had been carried out since 1980 but some 30 people were still under sentence of death, mostly for particularly abhorrent crimes.

281. Turning to individual articles of the Convention, the representative said that there was no definition of torture in the Penal Code, but the definition in article 1 of the Convention had the force of law in Algeria.

282. With regard to article 2 of the Convention, the representative drew the attention of members of the Committee to a stipulation in the health law to the effect that physicians had to report to the Government Procurator or to the judicial Police any evidence of ill-treatment of minors or persons deprived of their liberty which they came across in the course of their duties. He stated that the President of the Republic, after consultation with relevant State organs, could declare a state of emergency but no such situation had arisen since the adoption of the new Algerian Constitution. There was no direct reference to torture in the regulations governing states of exception or siege. With regard to superior orders, the representative said that a superior officer who ordered a subordinate to commit an unlawful act might be liable to prosecution as an accomplice or as the instigator of the act, while the subordinate was prosecuted as author of the act.

283. With reference to article 4 of the Convention, the representative stated that the Penal Code did not lay down specific penalties for acts of torture but that agents of the State who infringed individual freedoms were subject to a prison sentence of five to ten years. Agents of the State found guilty of acts of torture would receive a prison sentence ranging from six months to three years.

284. In connection with article 6 of the Convention, the representative explained that the Algerian authorities would detain a person suspected of torture in another country on the request of the State concerned and that the Supreme Court would decide whether extradition should take place.

285. With regard to article 10 of the Convention, the representative said that a number of measures had been taken to improve education and training for legal and judicial personnel, including courses and seminars for judges and the judicial police. All officials participating in investigations had special training courses on their obligation to preserve individual freedoms. He also mentioned that three schools for prison officers had been opened. With regard to the training of physicians, the representative said that a council for medical ethics had been established and that physicians received instruction in the international human rights standards to which Algeria was a party.

286. Referring to article 11 of the Convention, the representative stated that the Constitution provided for police custody with a duration of 48 hours, during which time the detainee could communicate with his lawyer, be examined by a physician of his own choice, and at all times enter into direct contact with members of his family. The Government prosecutor could in certain instances extend this period. Each police station and gendarmerie brigade maintained a register of persons in police custody. The representative provided information on the different categories of detention establishment and added that all establishments had to be visited by magistrates, procurators and juges d'instruction.

287. With regard to article 12 of the Convention, the representative informed the Committee of the establishment of a human rights office under the Ministry of Justice which would investigate cases of human rights abuses in cooperation with non-governmental organizations. He said that there had been only one case of ill-treatment of detainees, which had occurred when more than 100 prisoners had escaped from a penal establishment and had been badly treated after their rearrest. A commission of inquiry had been set up and proceedings had been instituted against three wardens.

288. Turning to article 14 of the Convention, the representative explained that, according to the Code of Penal Procedure, either the judicial police or a victim of an act of torture could initiate compensation proceedings. In some circumstances, the State bore the civil liability for acts committed by its agents and could claim the amount of compensation paid from the person who had committed the offence.

289. In his reply to questions concerning article 15 of the Convention, the representative said that a confession could not be accepted as sole proof of guilt but would be accepted or rejected in the light of other evidence available.

Concluding observations

290. Concluding their examination of the report, the members of the Committee said that the replies given by the representative had shed new light on the issues raised by the report, which had shown the efforts being made by the Algerian Government to modernize its legislation in the interests of greater democratization. It was noted that further improvement was needed in respect of the maximum duration of police custody and the issues of extradition and refoulement.

V. CONSIDERATION OF INFORMATION RECEIVED UNDER ARTICLE 20 OF THE CONVENTION

291. In accordance with article 20, paragraph 1, of the Convention, if the Committee receives reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State party, the Committee shall invite that State party to cooperate in the examination of the information and, to this end, to submit observations with regard to the information concerned.

292. In accordance with rule 69 of the Committee's rules of procedure, the Secretary-General shall bring to the attention of the Committee information which is, or appears to be, submitted for the Committee's consideration under article 20, paragraph 1, of the Convention.

293. No information shall be received by the Committee if it concerns a State party which, in accordance with article 28, paragraph 1, of the Convention, declared at the time of ratification of or accession to the Convention that it did not recognize the competence of the Committee provided for in article 20, unless that State party has subsequently withdrawn its reservation in accordance with article 28, paragraph 2, of the Convention.

294. The Secretary-General, in pursuance of rule 69 of the rules of procedure, brought to the attention of the Committee at its fourth session information that had been submitted for the Committee's consideration under article 20, paragraph 1, of the Convention. The Committee's work under article 20 of the Convention thus commenced at its fourth session and continued at its fifth and sixth sessions. The Committee devoted four closed meetings during its fourth and fifth sessions and three closed meetings during the sixth session to its activities under that article.

295. In accordance with the provisions of article 20 and rules 72 and 73 of the rules of procedure, all documents and proceedings of the Committee relating to its functions under article 20 of the Convention are confidential and all the meetings concerning its proceedings under that article are closed.

VI. CONSIDERATION OF COMMUNICATIONS UNDER ARTICLE 22 OF THE CONVENTION

296. Under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, individuals who claim that any of their rights enumerated in the Convention have been violated by a State party and who have exhausted all available domestic remedies may submit written communications to the Committee against Torture for consideration. Twenty-five out of 55 States that have acceded to or ratified the Convention have declared that they recognize the competence of the Committee to receive and consider communications under article 22 of the Convention. Those States are Algeria, Argentina, Austria, Canada, Denmark, Ecuador, Finland, France, Greece, Hungary, Italy, Liechtenstein, Luxembourg, Malta, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Togo, Tunisia, Turkey and Uruguay. No communication may be received by the Committee if it concerns a State party to the Convention that has not recognized the competence of the Committee to do so.

297. Consideration of communications under article 22 of the Convention takes place in closed meetings (art. 22, para. 6). All documents pertaining to the work of the Committee under article 22 (submissions from the parties and other working documents of the Committee) are confidential.

298. In carrying out its work under article 22 of the Convention, the Committee may be assisted by a working group of not more than five of its members, which submits recommendations to the Committee regarding the fulfilment of the conditions of admissibility of communications or assists it in any manner which the Committee may decide (rule 106 of the rules of procedure of the Committee).

299. A communication may not be declared admissible unless the State party has received the text of the communication and has been given an opportunity to furnish information or observations concerning the question of admissibility, including information relating to the exhaustion of domestic remedies (rule 108, para. 3). Within six months after the transmittal to the State party of a decision of the Committee declaring a communication admissible, the State party shall submit to the Committee written explanations or statements clarifying the matter under consideration and the remedy, if any, which may have been taken by it (rule 110, para. 2).

300. The Committee concludes examination of an admissible communication by formulating its views thereon in the light of all information made available to it by the complainant and the State party. The views of the Committee are communicated to the parties (art. 22, para. 7, of the Convention and rule 111, para. 3) and are thereafter made available to the general public. As a rule, the text of the Committee's decisions declaring communications inadmissible under article 22 of the Convention are also made public.

301. Pursuant to rule 112 of its rules of procedure, the Committee shall include in its annual report a summary of the communications examined and, where appropriate, a summary of the explanations and statements of the States parties concerned and of its own views. The Committee may also include in its annual report the text of its views under article 22, paragraph 7, of the Convention and the text of any decision declaring a communication inadmissible.

302. Three communications (Nos. 4/1990, 5/1990 and 6/1990) were placed before the Committee at its fifth session. It concluded consideration of one of these communications (Nos. 5/1990, W. J. v. Austria) by declaring it inadmissible under article 22, paragraph 5 (a), of the Convention, which precludes the Committee from considering a communication if the same matter is being examined or has been examined under another procedure of international investigation or settlement. The Committee had ascertained that the same matter had been submitted to the European Commission of Human Rights. For the text of the Committee's decision, see annex VIII to the present report.

303. At its sixth session, the Committee resumed consideration of communications Nos. 4/1990 and 6/1990 and commenced consideration of communication 7/1990. It declared communication No. 4/1990 (R. E. G. v. Turkey) inadmissible under article 22, paragraph 5 (b), of the Convention, which precludes the Committee from considering a communication if all available domestic remedies have not been exhausted, unless it is established that the application of the remedies has been or would be unreasonably prolonged or would be unlikely to bring effective relief. The facts, as placed before it, did not reveal that the author had made sufficient attempts to exhaust domestic remedies. Pursuant to rule 109, paragraph 2, of its rules of procedure, the Committee may review a decision declaring a communication inadmissible under article 22, paragraph 5 (b), of the Convention, upon receipt of documentary evidence from the author to the effect that the reasons for inadmissibility no longer apply. For the text of the Committee's decision, see annex VIII of the present report.

304. The Committee will resume consideration of communications Nos. 6/1990 and 7/1990 at its next session.

VII. FUTURE MEETINGS OF THE COMMITTEE

305. In accordance with rule 2 of its rules of procedure, the Committee shall normally hold two regular sessions each year. Regular sessions of the Committee shall be convened at dates decided by the Committee in consultation with the Secretary-General, taking into account the calendar of conferences as approved by the General Assembly.

306. As the calendar of meetings held within the framework of the United Nations is submitted by the Secretary-General on a biennial basis for the approval of the Committee on Conferences and the General Assembly, the Committee took decisions on the schedule of its meetings to be held in 1992 and 1993.

307. Accordingly, at its 75th meeting, on 23 April 1991, the Committee decided to hold its regular sessions for the next biennium at the United Nations Office at Geneva on the following dates:

Eighth session: from 27 April to 8 May 1992;

Ninth session: from 9 to 20 November 1992;

Tenth session: from 19 to 30 April 1993;

Eleventh session: from 8 to 19 November 1993.

VIII. ADOPTION OF THE REPORT

308. In accordance with article 24 of the Convention, the Committee shall submit an annual report on its activities to the States parties and to the General Assembly.

309. Since the Committee will hold its second regular session of each calendar year in late November, which coincides with the regular sessions of the General Assembly, the Committee decided to adopt its annual report at the end of its spring session for appropriate transmission to the General Assembly during the same calendar year.

310. Accordingly, at its 85th, 86th and 87th meetings, held on 30 April and 2 and 3 May 1991, the Committee considered the draft report on its activities at the fifth and sixth sessions (CAT/C(VI)/CRP.1 and Add.1-13, CAT/C(VI)/CRP.2 and Add.1-2 and CAT/C(VI)/CRP.3 and Add.1-4). The report, as amended in the course of the discussion, was adopted by the Committee unanimously. An account of the activities of the Committee at its seventh session (11 to 22 November 1991) will be included in the annual report of the Committee for 1992.

Notes

1/ For previous discussions on this issue, see Official Records of the General Assembly, Forty-fifth Session, Supplement No. 46 (A/45/46, paras. 11-16) and CAT/C/SR.38, 48 and 49.

2/ See Official Records of the General Assembly, Forty-fourth Session, Supplement No. 46 (A/44/46), paras. 14-16.

ANNEX I

List of States which have signed, ratified or acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as at 3 May 1991

State	Date of signature	Date of receipt of the instrument of ratification or accession
Afghanistan	4 February 1985	1 April 1987
Algeria a/	26 November 1985	12 September 1989
Argentina a/	4 February 1985	24 September 1986
Australia	10 December 1985	8 August 1989
Austria a/	14 March 1985	29 July 1987
Belgium	4 February 1985	
Belize		17 March 1986 b/
Bolivia	4 February 1985	
Brazil	23 September 1985	28 September 1989
Bulgaria	10 June 1986	16 December 1986
Byelorussian Soviet Socialist Republic	19 December 1985	13 March 1987
Cameroon		19 December 1986 b/
Canada a/	23 August 1985	24 June 1987
Chile	23 September 1987	30 September 1988
China	12 December 1986	4 October 1988
Colombia	10 April 1985	8 December 1987
Costa Rica	4 February 1985	
Cuba	27 January 1986	
Cyprus	9 October 1985	
Czechoslovakia	8 September 1986	7 July 1988
Denmark a/	4 February 1985	27 May 1987
Dominican Republic	4 February 1985	

State	Date of signature	Date of receipt of the instrument of ratification or accession
Ecuador a/	4 February 1985	30 March 1988
Egypt		25 June 1986 b/
Finland a/	4 February 1985	30 August 1989
France a/	4 February 1985	18 February 1986
Gabon	21 January 1986	
Gambia	23 October 1985	
Germany	13 October 1986	1 October 1990
Greece a/	4 February 1985	6 October 1988
Guatemala		5 January 1990 b/
Guinea	30 May 1986	10 October 1989
Guyana	25 January 1988	19 May 1988
Hungary a/	28 November 1986	15 April 1987
Iceland	4 February 1985	
Indonesia	23 October 1985	
Israel	22 October 1986	
Italy a/	4 February 1985	12 January 1989
Libyan Arab Jamahiriya		16 May 1989 b/
Liechtenstein a/	27 June 1985	2 November 1990
Luxembourg a/	22 February 1985	29 September 1987
Malta a/		13 September 1990 b/
Mexico	18 March 1985	23 January 1986
Morocco	8 January 1986	
Netherlands a/	4 February 1985	21 December 1988
New Zealand a/	14 January 1986	10 December 1989
Nicaragua	15 April 1985	
Nigeria	28 July 1988	

State	Date of signature	Date of receipt of the instrument of ratification or accession
Norway a/	4 February 1985	9 July 1986
Panama	22 February 1985	24 August 1987
Paraguay	23 October 1989	12 March 1990
Peru	29 May 1985	7 July 1988
Philippines		18 June 1986 b/
Poland	13 January 1986	26 July 1989
Portugal a/	4 February 1985	9 February 1989
Romania		18 December 1990 b/
Senegal	4 February 1985	21 August 1986
Sierra Leone	18 March 1985	
Somalia		24 January 1990 b/
Spain a/	4 February 1985	21 October 1987
Sudan	4 June 1986	
Sweden a/	4 February 1985	8 January 1986
Switzerland a/	4 February 1985	2 December 1986
Togo a/	25 March 1987	18 November 1987
Tunisia a/	26 August 1987	23 September 1988
Turkey a/	25 January 1988	2 August 1988
Uganda		3 November 1986 b/
Ukrainian Soviet Socialist Republic	27 February 1986	24 February 1987
Union of Soviet Socialist Republics	10 December 1985	3 March 1987
United Kingdom of Great Britain and Northern Ireland c/	15 March 1985	8 December 1988
United States of America	18 April 1988	

State	Date of signature	Date of receipt of the instrument of ratification or accession
Uruguay a/	4 February 1985	24 October 1986
Venezuela	15 February 1985	
Yugoslavia	18 April 1989	

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a/ Made the declaration under articles 21 and 22 of the Convention.

b/ Accession.

c/ Made the declaration under article 21 of the Convention.

ANNEX II

Membership of the Committee against Torture
(1991)

Name of member	Country of nationality	Term expires on 31 December
Mr. Peter Thomas BURNS	Canada	1991
Ms. Christine CHANET	France	1991
Ms. Socorro DIAZ PALACIOS	Mexico	1991
Mr. Alexis DIPANDA MOUELLE	Cameroon	1993
Mr. Ricardo GIL LAVEDRA	Argentina	1991
Mr. Yuri A. KHITRIN	Union of Soviet Socialist Republics	1993
Mr. Dimitar N. MIKHAILOV	Bulgaria	1993
Mr. Antonio P. PERLAS	Philippines	1991
Mr. Bent SØRENSEN	Denmark	1993
Mr. Joseph VOYAME	Switzerland	1993

ANNEX III

Status of submission of reports by States parties under article 19 of the Convention as at 3 May 1991

Initial reports due in 1988

State party	Date of entry into force	Initial report date due	Date of submission	Symbol
Afghanistan	26 June 1987	25 June 1988		
Argentina	26 June 1987	25 June 1988	15 December 1988	CAT/C/5/Add.12/Rev.1
Austria	28 August 1987	27 August 1988	10 November 1988	CAT/C/5/Add.10
Belize	26 June 1987	25 June 1988	18 April 1991	CAT/C/5/Add.25
Bulgaria	26 June 1987	25 June 1988		
Byelorussian Soviet Socialist Republic	26 June 1987	25 June 1988	11 January 1989	CAT/C/5/Add.14
Cameroon	26 June 1987	25 June 1988	15 February 1989 and 25 April 1991	CAT/C/5/Add.16 and 26
Canada	24 July 1987	23 July 1988	16 January 1989	CAT/C/5/Add.15
Denmark	26 June 1987	25 June 1988	26 July 1988	CAT/C/5/Add.4
Egypt	26 June 1987	25 June 1988	26 July 1988 and 20 November 1990	CAT/C/5/Add.5 and 23
France	26 June 1987	25 June 1988	30 June 1988	CAT/C/5/Add.2
German Democratic Republic	9 October 1987	8 October 1988	19 December 1988	CAT/C/5/Add.13
Hungary	26 June 1987	25 June 1988	25 October 1988	CAT/C/5/Add.9
Luxembourg	29 October 1987	28 October 1988		
Mexico	26 June 1987	25 June 1988	10 August 1988 and 13 February 1990	CAT/C/5/Add.7 and 22
Norway	26 June 1987	25 June 1988	21 July 1988	CAT/C/5/Add.3
Panama	23 September 1987	22 September 1988	28 January 1991	CAT/C/5/Add.24
Philippines	26 June 1987	25 June 1988	26 July 1988 and 28 April 1989	CAT/C/5/Add.6 and 18
Senegal	26 June 1987	25 June 1988	30 October 1989	CAT/C/5/Add.19 (replacing Add.8)
Spain	20 November 1987	19 November 1988	19 March 1990	CAT/C/5/Add.21
Sweden	26 June 1987	25 June 1988	23 June 1988	CAT/C/5/Add.1
Switzerland	26 June 1987	25 June 1988	14 April 1989	CAT/C/5/Add.17
Togo	18 December 1987	17 December 1988		
Uganda	26 June 1987	25 June 1988		
Ukrainian Soviet Socialist Republic	26 June 1987	25 June 1988	17 January 1990	CAT/C/5/Add.20
Union of Soviet Socialist Republics	26 June 1987	25 June 1988	6 December 1988	CAT/C/5/Add.11
Uruguay	26 June 1987	25 June 1988		

Initial reports due in 1989

State party	Date of entry into force	Initial report date due	Date of submission	Symbol
Chile	30 October 1988	29 October 1989	21 September 1989 and 5 November 1990	CAT/C/7/Add.2 and 9
China	3 November 1988	2 November 1989	1 December 1989	CAT/C/7/Add.5
Colombia	7 January 1988	6 January 1989	24 April 1989	CAT/C/7/Add.1 and 10
Czechoslovakia	6 August 1988	5 August 1989	21 November 1989	CAT/C/7/Add.4
Ecuador	29 April 1988	28 April 1989	27 June 1990 and 28 February 1990	CAT/C/7/Add.7 and 11
Greece	5 November 1988	4 November 1989	8 August 1990	CAT/C/7/Add.8
Guyana	18 June 1988	17 June 1989		
Peru	6 August 1988	5 August 1989		
Tunisia	23 October 1988	22 October 1989	25 October 1989	CAT/C/7/Add.3
Turkey	1 September 1988	31 August 1989	24 April 1990	CAT/C/7/Add.6

Initial reports due in 1990

State party	Date of entry into force	Initial report date due	Date of submission	Symbol
Algeria	12 October 1989	11 October 1990	13 February 1991	CAT/C/9/Add.5
Australia	7 September 1989	6 September 1990		
Brazil	28 October 1989	27 October 1990		
Finland	29 September 1989	28 September 1990	28 September 1990	CAT/C/9/Add.4
Guinea	9 November 1989	8 November 1990		
Italy	11 February 1989	10 February 1990		
Libyan Arab Jamahiriya	15 June 1989	14 June 1990		
Netherlands	20 January 1989	19 January 1990	14 March- 11 September- 13 September 1990	CAT/C/9/Add.1-3
Poland	25 August 1989	24 August 1990		
Portugal	11 March 1989	10 March 1990		
United Kingdom of Great Britain and Northern Ireland	7 January 1989	6 January 1990	22 March 1991	CAT/C/9/Add.6

Initial reports due in 1991

State party	Date of entry into force	Initial report date due	Date of submission	Symbol
Germany	31 October 1990	30 October 1991		
Guatemala	4 February 1990	3 February 1991		
Liechtenstein	2 December 1990	1 December 1991		
Malta	13 October 1990	12 October 1991		
New Zealand	9 January 1990	8 January 1991		
Paraguay	11 April 1990	10 April 1991		
Somalia	23 February 1990	22 February 1991		

ANNEX IV

Consolidated guidelines for the initial part of the reports of States parties

Land and people

1. This section should contain information about the main ethnic and demographic characteristics of the country and its population, as well as such socio-economic and cultural indicators as per capita income, gross national product, rate of inflation, external debt, rate of unemployment, literacy rate and religion. It should also include information on the population by mother tongue, life expectancy, infant mortality, maternal mortality, fertility rate, percentage of population under 15 and over 65 years of age, percentage of population in rural areas and in urban areas and percentage of households headed by women. As far as possible, States should make efforts to provide all data disaggregated by sex.

General political structure

2. This section should describe briefly the political history and framework, the type of government and the organization of the executive, legislative and judicial organs.

General legal framework within which human rights are protected

3. This section should contain information on:

(a) Which judicial, administrative or other competent authorities have jurisdiction affecting human rights;

(b) What remedies are available to an individual who claims that any of his rights have been violated; and what systems of compensation and rehabilitation exist for victims;

(c) Whether any of the rights referred to in the various human rights instruments are protected either in the constitution or by a separate bill of rights and, if so, what provisions are made in the constitution or bill of rights for derogations and in what circumstances;

(d) How human rights instruments are made part of the national legal system;

(e) Whether the provisions of the various human rights instruments can be invoked before, or directly enforced by, the courts, other tribunals or administrative authorities or whether they must be transformed into internal laws or administrative regulations in order to be enforced by the authorities concerned;

(f) Whether there exist any institutions or national machinery with responsibility for overseeing the implementation of human rights.

Information and publicity

4. This section should indicate whether any special efforts have been made to promote awareness among the public and the relevant authorities of the rights set forth in the various human rights instruments. The topics to be addressed should include the manner and extent to which the texts of the various human rights instruments have been disseminated, whether such texts have been translated into the local language or languages, what government agencies have responsibility for preparing reports and whether they normally receive information or other inputs from external sources, and whether the contents of the reports are the subject of public debate.

ANNEX V

General guidelines regarding the form and contents of initial reports to be submitted by States parties under article 19, paragraph 1, of the Convention

Revised by the Committee at its 82nd meeting (sixth session) on 26 April 1991

PART I: INFORMATION OF A GENERAL NATURE

1. This part should:

(a) Describe briefly the general legal framework within which torture as defined in article 1, paragraph 1, of the Convention as well as other cruel, inhuman or degrading treatment or punishment are prohibited and eliminated in the reporting State;

(b) Indicate whether the reporting State is a party to an international instrument or has national legislation which does or may contain provisions of wider application than those provided for under the Convention;

(c) Indicate what judicial, administrative or other competent authorities have jurisdiction over matters dealt with in the Convention and provide information on cases actually dealt with by those authorities during the reporting period;

(d) Describe briefly the actual situation as regards the practical implementation of the Convention in the reporting State and indicate any factors and difficulties affecting the degree of fulfilment of the obligations of the reporting State under the Convention.

PART II: INFORMATION IN RELATION TO EACH OF THE ARTICLES IN PART I OF THE CONVENTION

2. This part should provide specific information relating to the implementation by the reporting State of articles 2 to 16 of the Convention, in accordance with the sequence of those articles and their respective provisions. It should include in relation to the provisions of each article:

(a) The legislative, judicial, administrative or other measures in force which give effect to those provisions;

(b) Any factors or difficulties affecting the practical implementation of those provisions;

(c) Any information on concrete cases and situations where measures giving effect to those provisions have been enforced including any relevant statistical data.

3. The report should be accompanied by sufficient copies in one of the working languages (English, French, Russian or Spanish) of the principal

legislative and other texts referred to in the report. These will be made available to members of the Committee. It should be noted, however, that they will not be reproduced for general distribution with the report. It is desirable therefore that, when a text is not actually quoted in or annexed to the report itself, the report should contain sufficient information to be understood without reference to it. The text of national legislative provisions relevant to the implementation of the Convention should be quoted in the report.

ANNEX VI

General guidelines regarding the form and contents of periodic reports to be submitted by States parties under article 19, paragraph 1, of the Convention

Adopted by the Committee at its 85th meeting (sixth session) on 30 April 1991

1. Under article 19, paragraph 1, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

> "the States parties shall submit to the Committee against Torture, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under the Convention, within one year after the entry into force of the Convention for the State party concerned. Thereafter the States parties shall submit supplementary reports every four years on any new measures taken and such other reports as the Committee may request".

2. The general guidelines for the submission of periodic reports appearing below would assist the Committee to fulfil the tasks entrusted to it pursuant to article 19 of the Convention.

3. Periodic reports by States parties should be presented in two parts, as follows:

PART I: INFORMATION ON NEW MEASURES AND NEW DEVELOPMENTS RELATING TO THE IMPLEMENTATION OF THE CONVENTION FOLLOWING THE ORDER OF ARTICLES 1 TO 16, AS APPROPRIATE

(a) This part should describe in detail:

(i) Any new measures taken by the State party to implement the Convention during the period extending from the date of submission of its previous report to the date of submission of the periodic report to be considered by the Committee;

(ii) Any new developments which have occurred during the same period and are relevant to implementation of the Convention;

(b) The State party should provide, in particular, information concerning:

(i) Any change in the legislation and in institutions that affect the implementation of the Convention on any territory under its jurisdiction in particular on places of detention and on training given to law enforcement and medical personnel;

(ii) Any new case law of relevance for the implementation of the Convention;

(iii) Complaints, inquiries, indictments, proceedings, sentences, reparation and compensation for acts of torture and other cruel, inhuman or degrading treatment or punishment;

(iv) Any difficulty which would prevent the State party from fully discharging the obligations it has assumed under the Convention.

PART II: ADDITIONAL INFORMATION REQUESTED BY THE COMMITTEE

This part should contain any information requested by the Committee during its consideration of the preceding report by the State party, unless it has been provided by the representatives of the Government of the State party, either in a subsequent communication by the Government or in an additional report which the Government has presented in accordance with rule 67, paragraph 2, of the Committee's rules of procedure.

ANNEX VII

Country rapporteurs and alternate rapporteurs for each of the reports of States parties considered by the Committee at its fifth and sixth sessions

A. Fifth session

Report	Rapporteur	Alternate
Spain (CAT/C/5/Add.21)	Mr. Gil Lavedra	Ms. Chanet
Turkey (CAT/C/7/Add.6)	Mr. Burns	Mr. Gil Lavedra
Ecuador (CAT/C/7/Add.7)	Mr. Gil Lavedra	Mr. Sørensen
Greece (CAT/C/7/Add.8)	Mr. Khitrin	Mr. Sørensen
Netherlands Antilles (CAT/C/9/Add.2) and Aruba (CAT/C/9/Add.3)	Mr. Dipanda Mouelle	Mr. Burns
Finland (CAT/C/9/Add.4)	Mr. Sørensen	Ms. Chanet

B. Sixth session

Report	Rapporteur	Alternate
Panama (CAT/C/5/Add.24)	Mr. Sørensen	Mrs. Díaz Palacios
Chile (CAT/C/7/Add.9)	Mrs. Díaz Palacios	Mr. Dipanda Mouelle
Algeria (CAT/C/9/Add.5)	Mr. Dipanda Mouelle	Ms. Chanet

ANNEX VIII

Decisions of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

A. Communication No. 5/1990, W. J. v. Austria (Decision of 22 November 1990, adopted at the fifth session)

Submitted by: W. J. [name deleted]

Alleged victim: The author

State party concerned: Austria

Date of communication: 25 August 1990

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 20 November 1990,

Adopts the following:

Decision on admissibility

1. The author of the communication (submission dated 25 August 1990 and subsequent correspondence) is W. J., an Austrian citizen currently detained at a correctional facility in Austria. He claims to be the victim of violations by Austria of articles 12, 13 and 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Austria made the declaration provided for in article 22 of the Convention effective 28 August 1987.

2. Before considering any claims contained in a communication, the Committee against Torture must, in accordance with rule 107 of its rules of procedure, decide whether or not it is admissible under article 22 of the Convention.

3. Article 22, paragraph 5 (a), of the Convention provides that the Committee shall not consider any communication from an individual unless it has ascertained that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement. Having ascertained that the author has submitted the same matter to the European Commission of Human Rights, which has registered the case as application No. 16121/90, the Committee is precluded from examining the communication.

4. The Committee therefore decides:

(a) That the communication is inadmissible;

(b) That this decision shall be communicated to the author and, for information, to the State party.

[Done in English, French, Russian and Spanish, the English text being the original version]

B. Communication No. 4/1990, R. E. G. v. Turkey (Decision of 29 April 1991, adopted at the sixth session)

Submitted by: R. E. G. [name deleted]

Alleged victim: The author

State party concerned: Turkey

Date of communication: 20 August 1990

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 29 April 1991,

Adopts the following:

Decision on admissibility

1. The author of the communication is a Turkish citizen of Kurdish ethnic origin, currently residing in France, where he is applying for political asylum. He claims to be a victim of torture allegedly perpetrated by Turkish police in May of 1989. Turkey made the declaration provided for in article 22 of the Convention on 2 August 1988.

2. Before considering any claims contained in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention.

3. Article 22, paragraph 5 (b), of the Convention precludes the Committee from considering any communication from an individual, unless it has ascertained that the individual has exhausted all available domestic remedies; this rule does not apply if it is established that the application of domestic remedies has been or would be unreasonably prolonged or would be unlikely to bring effective relief. The author has invoked this exception, generally claiming that remedies in Turkey would not be effective; thus he has not filed any complaint with the competent authorities in Turkey with a view to initiating an investigation under Turkish law into his allegation that he was subjected to torture. However, on the basis of the information before it, the Committee cannot conclude that such a complaint would be a priori ineffective and, as such, would not provide a remedy that the author need exhaust before addressing a communication to the Committee. Accordingly, the Committee finds that the requirements of article 22, paragraph 5 (b), of the Convention have not been met.

4. The Committee therefore decides:

(a) That the communication is inadmissible;

(b) That this decision may be reviewed under rule 109 of the Committee's rules of procedure upon receipt of a written request by or on behalf of the author containing information to the effect that the reasons for inadmissibility no longer apply;

(c) That this decision shall be communicated to the author and, for information, to the State party.

[Done in English, French, Russian and Spanish, the English text being the original version]

ANNEX IX

List of documents issued for the Committee during the reporting period

A. Fifth session

Symbol	Title
CAT/C/7/Add.6	Initial report of Turkey
CAT/C/7/Add.7	Initial report of Ecuador
CAT/C/7/Add.8	Initial report of Greece
CAT/C/9/Add.2	Initial report of the Netherlands Antilles
CAT/C/9/Add.3	Additional report of the Netherlands: Aruba
CAT/C/9/Add.4	Initial report of Finland
CAT/C/11	Provisional agenda and annotations
CAT/C/SR.58-72	Summary records of the fifth session of the Committee

B. Sixth session

Symbol	Title
CAT/C/2/Rev.1	Status of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and reservations, declarations and objections under the Convention
CAT/C/5/Add.22	Additional information of Mexico
CAT/C/5/Add.23	Additional information of Egypt
CAT/C/5/Add.24	Initial report of Panama
CAT/C/7/Add.9	Additional report of Chile
CAT/C/7/Add.10	Additional report of Colombia
CAT/C/Add.11	Additional report of Ecuador
CAT/C/9/Add.5	Initial report of Algeria

Symbol	Title
CAT/C/12	Note by the Secretary-General listing initial reports that are due in 1991
CAT/C/13	Provisional agenda and annotations
CAT/C/SR.73-87	Summary records of the sixth session of the Committee

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